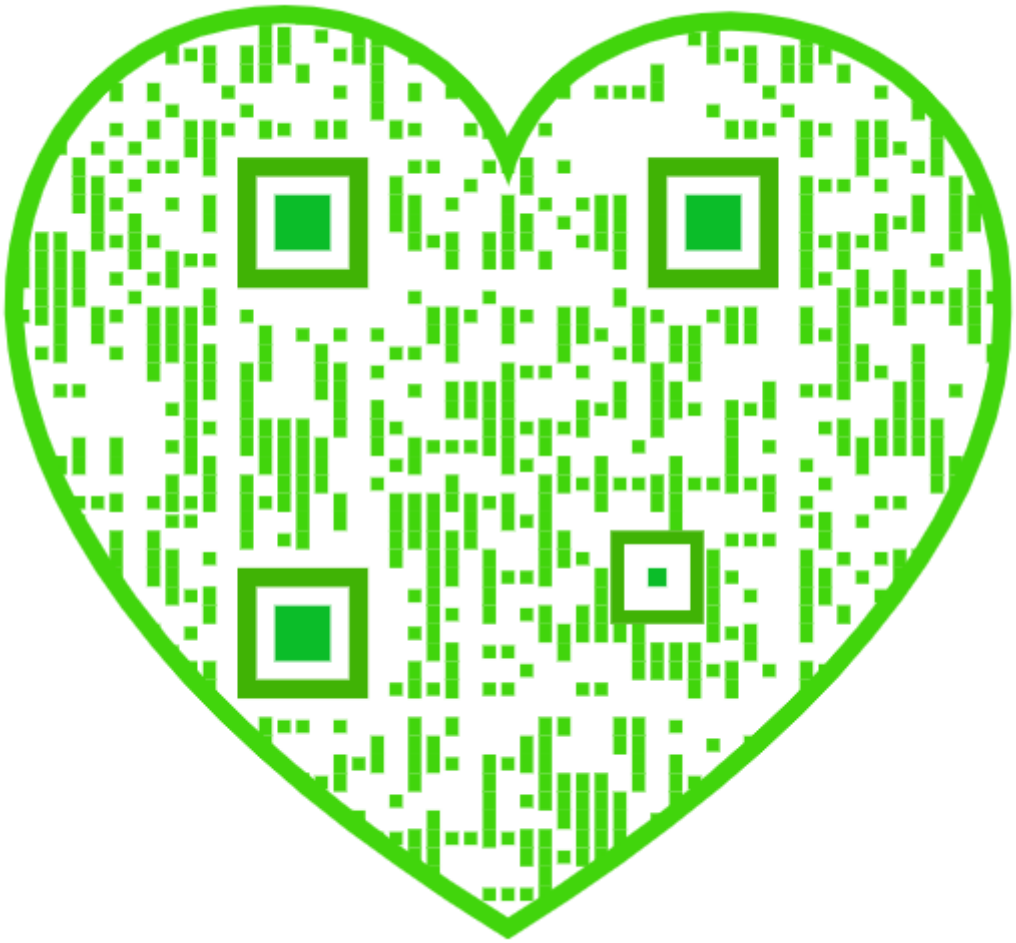

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TWENTIETH CENTURY TEXT-BOOKS

THE GOVERNMENT

OF THE

UNITED STATES

BY

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PROFESSOR OF HISTORY AND POLITICAL SCIENCE
IN THE UNIVERSITY OF CALIFORNIA

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PREFACE

THE main purpose of this book is to show what the Government of the United States is, by giving a sketch of its organization and the general methods of its working. It deals not only with the central, or Federal government, but also with the State, Territorial, and local governments; and all of these taken together make up the Government of the United States. Students who undertake the study of this Government should keep in mind the fact that each of the governments, local, State, and Federal, exercises some part of the political power of the nation. This is the territorial distribution of power. He should also keep in mind the fact that in the town or city government, as well as in the State or Federal government, the power which each holds is divided among the legislative, the executive, and the judicial departments. This is a distribution according to the kind of power to be exercised. Thus, in order to understand how this nation is governed, one must give attention to both of these forms of distribution.

The topics here treated, concerning the organization and powers of the Government, constitute a general subject by themselves. If properly comprehended, they show us what the Government is. They are sufficient to occupy the student during the time usually allotted to this study, and they must

be understood before he can give his attention most profitably to the questions that arise in the course of the Government's practical work.

It will be observed that the book is divided into a series of numbered sections. In each of these sections a more or less distinct subject is treated, and it is believed that from this discussion of the various institutions of the Government a knowledge of the whole as well as of the individual parts will be easily acquired. The formal topics following each section are intended to assist the student in analyzing the text, and in finding out what are the essential points. Then by making use of the references to parts of other books, which are printed immediately below the topics, the student will, it is expected, acquire the habit of getting information from many sources. Through this practice he may, moreover, gradually prepare himself for investigating the subjects that are placed at the end of the several chapters. By reading carefully the documents and passages cited, the student may acquire a broader view than any single volume will convey; and under proper guidance he may receive, by the use of this material, training in the process of verifying statements concerning historical and political affairs. It will be generally expedient, however, for him to omit these subjects for advanced study until after thoroughly mastering the rest of the volume.

Bernard Moses.

University of California.

CONTENTS

CHAPTER		PAGE
I.	The Colonies	1
II.	Union and Independence	21
III.	Under the Articles of Confederation	39
IV.	The Federal Legislature	58
V.	What Congress Can Do	103
VI.	The Organization, Powers, and Duties of the Federal Executive	146
VII.	The Federal Courts	195
VIII.	Rights and Privileges of Citizens	216
IX.	The Continental Territories	249
X.	The Insular Dependencies	268
XI.	The Government of the States	281
XII.	Local Government in the United States	308
XIII.	The Individual Citizen in Relation to the Government	324
XIV.	International Relations	358

APPENDIX

I.	An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio	371
II.	Articles of Confederation	377
III.	Constitution of the United States of America	385
IV.	The President's Instructions to the Board of Commissioners of the Philippine Islands	402
V.	An Act Temporarily to Provide for the Administration of the Affairs of Civil Government in the Philippine Islands, and for Other Purposes	409
INDEX		415

THE GOVERNMENT OF THE UNITED STATES

CHAPTER I

THE COLONIES

1. The English Colonies in America.—The fact that several nations exist in the world is almost as apparent as the existence of the human race itself. Frenchmen learn very early that they are not Englishmen; the Japanese, that they are not Russians; and the Spaniards, that they are not Germans. Our traditions, our love of country, and our reading in history tend to keep clear in our minds the fact that the members of our nation constitute a large group by themselves, and that they are in some respects separate and distinct from those of other nations. The nation may be defined as a large independent group of persons possessing a definite territory and a supreme government. By a supreme government is meant a government that is not under any other government. The government of a city in the United States is under the State government. The government of a State is limited by the authority which the Constitution of the United States confers upon the Federal Government. The City of New York is a large group of persons and has a definite territory—that is to say, we know its boundaries; but it is under the government of the State of New York. It is therefore not a nation. The State of New York has also a definite territory; but it is not a nation, because its

government is under the superior authority of the United States. The United States has a definite territory, but its Government is not under any superior power; hence we call the United States a nation. For the same reasons we call France, Italy, or Japan a nation.

The colonies that were united to form the United States were at first under the government of England. They did not then constitute a separate nation; they were rather a part of the English nation. After they had declared their independence and maintained it, and formed a government for themselves that was not under any other government, then they became the nation that we call the United States of America.

The English Government granted, in large measure, to its American colonies the right to govern themselves. These colonies were often small in the beginning, but they grew strong by being compelled to rely upon themselves. The colonists found along the Atlantic coast only a sparse population of savages, who they expected would disappear, and who have almost entirely disappeared. From these Indians they kept aloof. They drove them back into the wilderness, and maintained the European standard of civilization. The Spaniards, who settled Mexico and South America intermarried with the Indians, and as a consequence their descendants fell below the European standard. The colonies of Spain were more completely dependent upon the mother country than were the colonies of England. The most noticeable points of contrast between the relations of these two nations with their colonies are the following:

1. The Spanish colonists might not trade with the merchants of foreign nations. The English colonists were free to trade in certain wares with any nation.

2. For a long time Spain required all trade with America to pass through a single Spanish port. England allowed

all her ports to have equal privileges with reference to the trade with America.

3. Spanish colonies might not trade with one another. English colonies enjoyed full freedom in their intercolonial trade.

4. Spain laid special stress on getting gold and silver from America. England laid special stress on getting raw material for her manufactures.

5. Spain excluded from her colonies all foreign manufactures. England excluded from her colonial markets such foreign manufactures as were in competition with her home manufactures.

6. The traditions of the Spanish nation and the state of Spanish society in America favored the application of the principles of absolutism in the government of the Spanish colonies. The traditions of the English nation and the state of English society in America encouraged in the English colonies the development of popular rule.

Topics.—Definition of a nation.—Why the State of New York may not be called a nation.—How a colony may become a nation.—Attitude of the English Government toward its colonists.—Spanish system contrasted with the English system.

References.—Hinsdale, *American Government*, 26–76; Frothingham, *Rise of the Republic*, 1–157.

2. The Supremacy of the King.—The settlers in America and their descendants, whether English, French, or Spanish, regarded the king as the sole possessor of the supreme power over them; and all the colonizing nations in Europe participated in the view that American colonies were possessions of the king. This view was so firmly fixed in the minds of the Spanish-Americans that they considered themselves no longer bound to Spain after Napoleon had set aside the legitimate Spanish king. The French colonists, as the subjects of an absolute monarch, recognized, of

necessity, the supremacy of the king alone. The English colonists also recognized no supreme authority over them but that of the king.

The rapid growth of the power and prestige of the Parliament, however, led to a modification of this idea in England. Yet the Americans adhered to the thought that, as they were not represented in this body, it had no power over them. While, therefore, it was consistent with the later English view that the Parliament should have part in the government of the colonies, the colonists themselves protested against parliamentary interference in their affairs.

Topics.—American settlers' view of the king.—Attitude of the English settlers toward the Parliament.—English opinion as to the Parliament's relation to colonial affairs.

References.—Miller, *Lectures on the Constitution*, 36, 75.

3. The Colonial Governments.—At the close of the period of dependence, there were three classes of English colonies: (1) The republican colonies; those whose governors, as well as other officers, were elected by the people. Connecticut and Rhode Island belonged to this class. (2) The proprietary colonies; those whose governors were appointed by hereditary proprietors. Maryland, Pennsylvania, and Delaware belonged to this class. (3) The royal colonies; those whose governors were appointed by the crown. This class embraced Georgia, the two Carolinas, Virginia, New Jersey, New York, New Hampshire, and Massachusetts after 1692. During the colonial period many changes were made in the governments of the colonies. Some of these governments belonged to different classes at different times. Massachusetts, for example, prior to 1692, elected her governor, deputy governor, the assistants, and the members of the house of deputies. After 1692, under the new charter, the governor and the lieutenant governor

were appointed by the crown, while the members of the general court continued to be elected by the people.

In spite of the observed differences relating to the governor, the several colonies were in many respects similar. They were all subordinate to the English crown and were dependent parts of the English nation. They all had representative legislative assemblies, and these assemblies controlled the public funds and directed their expenditure. In each colony there was a small body, called the council, the assistants, or the magistrates, which in relation to the assembly was an upper house, and in relation to the governor was a cabinet or ministry. It did not take part in legislation in some of the colonies. In Pennsylvania, it performed only executive duties. In some cases the members of this council were elected by the people; in others, by the assembly; in still others, they were appointed by the king or the lords proprietary.

It thus appears that the form of most of the colonial governments resembled that of the Government of England. The king, the lords, and the commons were reproduced on a small scale in the governor, the council, and the assembly. The powers of the commons in England and the powers of the assembly in the colonies were derived from the people. The king in England received his power by hereditary right, and the governor in the colonies received his power in most cases by royal appointment. These facts helped to make the assemblies antagonistic to the governors appointed by the king, as the House of Commons was antagonistic to the crown. It was the antagonism, in both cases, between royal power and popular power.

Although the government in England determined what the colonial governments might or might not do, yet "practically each colony was a self-governing commonwealth, left to manage its own affairs with scarcely any

interference from home."[1] Through their representatives the colonists made their laws and voted their taxes; but the British Parliament "could overrule such laws as the colonies might make." The colonies insisted, however, that they should be free from all taxes except those levied by their own authority. Still, in comparison with the Spanish colonists, the English colonists in this respect enjoyed a large measure of freedom.

Topics.—The classes of English colonies.—The assembly and council, assistants, or magistrates.—General form of colonial governments.—Relation of royal to popular power.—Self-government in the colonies.

References.—Fiske, *Civil Government*, 146–165; Hart, *Actual Government*, 41–45; Macy, *Our Government*, 28.

4. Local Government in New England.—The primary local organizations in the governments of the New England colonies were towns or townships. The early New England town was a subordinate political society within a colony. It was a little republic, but limited in its action by the superior authority of the colony of which it was a part. The territory of the colony was divided up into townships. This was a revival of the condition of early England, when "the whole country was cut up into vills or towns," and "the law assumed that every acre of land lay in some town, some *villa*."[2]

The most important feature of the political organization of the town was the assembly of freemen, or qualified voters, in a town meeting. This meeting, embracing all the voters of the town, was held at least once a year, in the spring. It might be called at other times by the selectmen, and must be called by them on the demand of ten voters. This assembly performed the functions of both the electors and

[1] Bryce, *American Commonwealth*, i, 16.
[2] Maitland, *Township and Borough*, 8.

the legislature in a representative republic: (1) It elected the officers of the township. (2) It made the laws, voted the taxes, and appropriated to various purposes the sums raised by taxation. The assembly was convened in the central village of the township, and held its sessions in the town hall, the church, or the schoolhouse. The officers elected by the town meeting were the selectmen, a town clerk, a treasurer, assessors, a collector, a constable, and several minor officers. The number of the selectmen was three, five, seven, or nine, depending upon the size of the town and the amount of its public business. The selectmen constituted the executive of the town. The town clerk kept the town's public records of whatever sort. The treasurer received all money gathered from the taxpayers, or obtained by the town from other sources; and from these public funds he paid the public expenses of the town. The constable's functions in relation to the town were in some respects similar to the functions of a sheriff in relation to the county. Among the other officers were the assessors of the taxes and the overseers of the poor. The overseers of the poor superintended whatever public provision was made for the maintenance of the paupers of the town. There were also school committees, surveyors of highways, poundkeepers, inspectors of lumber, measurers of wood, and sealers of weights and measures.

The county, as a political entity larger than the town, came into existence through the coöperation of several causes:

1. The county had existed in England, and the conception and traditions of it were brought to America by the English colonists.

2. It was a convenient organization for supplementing both the work of the town and the work of the central government of the colony.

3. It was the result of the first step in the normal process

of social growth, by which the primary political bodies were united and finally amalgamated into the nation.

The shire, or county, in England was not one of a number of units into which the nation had been divided; it was, instead, but one of the constituent elements that were brought together to form the nation. Through the shire-mote, or county court, it exercised both legislative and judicial power. The most important single officer of the county was the sheriff. At first he was elected by the people, but later he was appointed by the king. He was the agent of the central government in the county. He was the executive officer of the courts; he summoned juries and executed judicial decrees. Other officers of the county in England were the coroners and the justices of the peace. A coroner formerly exercised extensive powers, but later his most prominent function was to summon a jury for determining the cause and manner of mysterious deaths. He held and exercised, also, certain police powers. Justices of the peace were administrative and judicial officers. After 1362, they were required, in an English county, to hold four meetings a year. When they were organized in these meetings, they constituted the Court of Quarter Sessions.

These essential features of the county were brought to New England by the settlers of Massachusetts. The four groups into which the towns of Massachusetts were gathered became in 1643 the counties of Suffolk, Norfolk, Essex, and Middlesex. They were organized as judicial districts, with the sheriff as the chief executive officer, and with a jail and a court-house as the principal public buildings. The office of the justice of the peace had already been established, and before the close of the seventeenth century these officers were organized in a body known as the Court of General Sessions. This court could try both civil and criminal cases; namely, civil cases involving not less than forty shillings, and criminal cases not involving a penalty of death

or banishment. The sheriff and the justices were appointed by the governor. In addition to this judicial organization, the county had also a military organization. Each town furnished a company, and the several companies were united and formed a county regiment.

In New England, the county was less important than the town. It was in the town that the inhabitants were trained for self-government. It was the towns, moreover, that maintained and developed the public schools. By a general law of Massachusetts, passed in 1647, it was ordered, "that every township in this jurisdiction, after the Lord hath increased them to the number of fifty householders, shall then forthwith appoint one within their town to teach all such children as shall resort to him, to write and read." The wages of the teachers were paid either by the parents or masters of the children, or by the inhabitants in general, as might be determined by the authorities of the town. And it was further ordered, "that when any town shall increase to the number of one hundred families or householders, they shall set up a grammar school, the master thereof being able to instruct youth so far as they may be fitted for the university." The New England town elicited the admiration of Jefferson. "Those wards," he said, "called townships in New England are the vital principle of their governments, and have proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self-government, and for its preservation."

Topics.—Character of the town in New England.—The assembly of freemen.—Officers of the town.—The county and its origin in New England.—Origin and status of the county in England.—Officers of the English county.—The first counties in Massachusetts.—The Court of General Sessions.—Military affairs of the county.—Public schools in Massachusetts.

References.—Maitland, *Township and Borough*, 8; Freeman, *Growth of the English Constitution*, Chap. I; Fiske, *Civil Government*,

16–47; Ford, *American Citizen's Manual,* Part I, 56–61; Hart, *Practical Essays,* 133–147; Hart, *Actual Government,* 44; Hinsdale, *American Government,* 38–40; Macy, *Our Government,* 10–14; De Toqueville, *Democracy in America,* i, 73–103; Bryce, *American Commonwealth,* i, 561–592; Levermore, *The Town and City Government of New Haven,* in *Johns Hopkins University Studies,* Fourth Series; Channing, *The Town and County in Massachusetts.*

5. Local Government in the Southern Colonies.—In studying local government in the United States, one should keep in mind the meaning of the terms used to designate the various local divisions or institutions. He should remember that a parish was originally a certain district in which an ecclesiastic had charge of the spiritual interests of the inhabitants. At first, in New England, the parish was the same as the town. When the inhabitants of the district in question were acting in civil or political matters, they were thought of as comprising a town; when they were acting as a body in religious matters, they were thought of as comprising a parish. In some places districts of this kind became generally known as parishes; in other places, as towns. In Louisiana, a district for merely civil and political purposes came to be designated a parish.

A hundred was composed of a number of townships, and formed part of a shire or county. In early England every freeman was required to be enrolled in a hundred; and the members of a hundred, or the inhabitants of a district known as a hundred, held meetings at times determined by custom or law. And the term court, as applied to early local institutions in the United States, does not always mean a judicial body. It is sometimes applied to a body having power to make laws as well as to try persons for the violation of law.

In the southern colonies the county overshadowed the parish, the hundred, and the town. In 1634, eight shires were created in Virginia. After 1643, they were called

counties; and at this date they were thirteen in number. Their officers were lieutenants, sheriffs, sergeants, and bailiffs. Under these officers it was proposed to make the government of a colonial county like that of a shire in England. In Virginia the counties were original groups, while in New England they were formed by the union of towns. The lieutenant was chief of the militia in the Virginia county, and in this position he became especially prominent by the long-continued hostilities with the Indians and by his duty of directing the police supervision of the slaves. The chief judicial authority in the county was exercised by the commissioners of the county courts. These commissioners, later called justices and magistrates, varied in number at different periods. From the county court certain cases might be appealed to the general court. This latter body at first met in March, June, September, and November, when it was called the quarterly court. Between 1659 and 1684 there was no June session, and the name "quarterly court" appeared to be inappropriate. It was then called the general court. After 1684, it met in April and October. An important function of the county court was levying the county taxes. The sheriff was the executive officer of the county court, and at the same time the executive officer of the county. He was appointed by the governor from a list of three persons nominated by the justices. His duties ranged from ducking a witch to carrying out the decrees of the governor.

In Maryland the local government was nearly like that of Virginia. The hundred was recognized at one time in the election of members of the assembly. Later, the assembly was composed of representatives of the counties. The hundred was employed in the fiscal and the military administration of the colonies. Taxes were levied and collected in the hundred; and the hundreds were the fiscal districts in the counties. They were also military districts,

in which the "trained bands" of the local militia were organized. Several hundreds were sometimes united to constitute a parish in Maryland, but in old England the hundred in many cases embraced several parishes. In the course of time the boundaries of hundreds throughout Maryland, "by vacating old roads, opening new ones, and other causes, were in a great measure obliterated and forgotten"; and the hundred ceased to be recognized in the administration of public affairs. The term "county" appears to have been used for the first time in Maryland in 1638. The first district of Maryland to receive this designation and to exercise the powers indicated by it was St. Mary's County. The county here was at first a judicial district in which taxes were levied and elections were held. It was from the counties that *burgesses*, or members of the local legislature, were sent to serve in the assembly, the number to be sent from each county varying from one to four. The central feature of the county organization was a judicial body called the county court. It was composed of commissioners appointed by the governor. The county court was therefore not a representative body; nor was it a democratic assembly; and its functions were never legislative. The sheriff was the most important single officer of the county in Maryland as well as in Virginia. He was appointed by the governor; but his original independence was ultimately lost, and he fell under the direction of the assembly, although he continued to be appointed by the governor. The sheriff's duties were similar to those performed by the sheriffs of the English shire. The county had other officers in addition to the sheriff and the commissioners who made up the county court. The most conspicuous of these were the coroner and the commander of the militia.

These were the typical local institutions of the southern colonies. The county was the effective unit. The inhabit-

ants lived scattered on large plantations. The extent of the plantations, and the comparatively few persons occupying a considerable area, made it necessary that a portion of territory very much larger than a New England township should belong to the political unit; otherwise, the political body would contain only a very few persons, too few to render it a proper political organization. The Congregational Church, moreover, was wanting, and there was no centralizing influence to draw the inhabitants together as the church had drawn them together in New England. There were no manufactures to induce the people to live in towns rather than on the great plantations. On the plantations there were gathered numbers of dependents, and this condition of things threw the management of public affairs into the hands of an aristocratic minority. A few men thus became very well trained for the business of government; and their special fitness and their opportunity of continuing in office gave them an extraordinary influence in the government of the colonies to which they belonged, and, later, in the government of the nation.

Topics.—Officers of the southern county.—The county court.—The general court.—The sheriff.—Local government in Maryland.—The hundred.—The county in Maryland.—The assembly.—Contrast between the social conditions of New England and those of the southern colonies.

References.—Fiske, *Civil Government*, 57–74; Hart, *Practical Essays*, 147–161; Hart, *Actual Government*, 45; Hinsdale, *American Government*, 40–42; Macy, *Our Government*, 17, 18.

6. Local Government in the Middle Colonies.—In the middle colonies the local government differed from that of New England as well as from that of the southern colonies. It embraced the principal features of the local government in both of these regions. Both towns and counties were recognized as parts of the political organization. The be-

ginnings of New York are found in the charter granted, in 1614, to the United New Netherland Company, by the States-General of Holland. This company was established to trade with the Indians, not to found colonies. The charter of the United New Netherland Company expired in 1618. The privileges it had enjoyed were granted to the West India Company in 1621. The general government of this company was vested in a board or assembly of nineteen delegates, who elected a director general and a council. The director general and the council held "all powers, judicial, legislative, and executive," under the permanent authority of the resolutions and customs of the Fatherland. The West India Company established certain proprietors called "Patroons." Each "Patroon" received a grant of land extending sixteen miles on one side of the Hudson River, or eight miles on both sides, "and as far into the country as the situation of the occupiers will permit." It was required of the persons receiving these grants that each should plant a colony of fifty persons over fifteen years of age. Each should undertake also to support a schoolmaster and a minister of religion. Manufacturing was prohibited. The "Patroon" was permitted to receive the services of the colonists, whose position under the "Patroon" was similar to that of the vassals with reference to their lords under European feudalism.

More liberal provisions for governing the Dutch settlements were made later. Municipal governments were framed under the authority of the West India Company. A representative government was granted to Brooklyn in 1646; and a form of municipal government was obtained for New Amsterdam in 1652. In 1653, moreover, "the present city of Albany was released from feudal jurisdiction." In the course of time other towns acquired municipal self-government, and under English rule the feudal privileges of the landed aristocracy tended to disappear. In New

York, after 1664, the county became an important factor in the local government; more important, in fact, than the county in New England, but less important than the county in Virginia. The town, however, as a vigorous inheritance from the Dutch, continued to maintain itself within the county, and to share with the county the control of the affairs of the local government. In Pennsylvania, William Penn established the county as the largest political division, and also carried out the provisions of his charter from Charles II, which permitted him "to erect and incorporate towns into boroughs, and boroughs into cities." In Massachusetts, the town was more important than the county; in Virginia, the county was more important than the town; but in the middle colonies the counties and the towns preserved a more nearly even balance of importance.

Topics.—General character of local government in the middle colonies.—Feudalism.—The beginnings of New York.—The West India Company.—"Patroons."—Later municipal governments under the Dutch.—The release of Albany from feudal jurisdiction.—The county in the middle colonies.—Penn's influence in Pennsylvania.

References.—Fiske, *Civil Government*, 70–80; Ford, *American Citizen's Manual*, Part I, 60–64; Hinsdale, *American Government*, 42, 43; Macy, *Our Government*, 14–16.

7. The Privilege of Voting.—"In New England the right of voting was inherent in persons admitted to the freedom of a colony." "A freeman did not become such unless he possessed certain prescribed qualifications, and until he had been approved, admitted, and sworn." When these steps had been taken "he became entitled to the exercise of the elective franchise." The candidate for the position of freeman had to meet different requirements in different places. In Rhode Island and Connecticut, and later in Maryland, a person must own land in order to be a

freeman. The position of freeman might be lost, and with it the right to vote. In some of the southern colonies race qualifications for voting were prescribed, which withheld the suffrage from the negro, the mulatto, and the Indian. In New England and Virginia moral delinquency might deprive one of the privilege of voting. In some of the colonies this privilege was confined to members of a Protestant church; in others to those that "acknowledged a God." Roman Catholics in most of the colonies, and Jews in some of them, could not vote. Women were prohibited from voting, by law in Virginia, and by custom in the other colonies. In each of the colonies there was a property qualification; this was different in different colonies, and varied greatly in some of the colonies from time to time.

Topics.—The right to vote in New England.—The negro and the mulatto in the southern colonies.—The religious qualification. —Property qualification.—Woman suffrage.

References.—*Columbia University Studies in History, Economics, and Law*, iii, 92; Hart, *Practical Essays*, 40–44, 135–138; Hart, *Actual Government*, 44; Hinsdale, *American Government*, 45, 46.

8. The Rights of the People.—The ideas that had become the foundation of civil liberty in England were brought to America by the colonists, and were here made the basis of colonial institutions. The system of law enforced in England, known as the Common Law, had been extended to the English colonies; and the colonists enjoyed all the rights of Englishmen under this law. In common with the people of England they enjoyed rights under the writ of *habeas corpus*, the rights of life and property, and the right of trial by jury in both civil and criminal cases. At first, as in England, their freedom was limited on the side of religion. In Massachusetts and Connecticut the Congregational Church was merged in the political organiza-

tion. During part of the history of these colonies only members of the church were freemen; and the church, like the secular institutions, was supported by general taxation. In Virginia the colonists were required to conform, "both in canons and constitution, to the Church of England, as near as may be." In 1632 it was required that all persons arriving on any ship should be asked to take the oath of supremacy and allegiance; and if any refused, he should be imprisoned. Religious freedom in the colonies grew from small beginnings, and in this regard the tolerance of Rhode Island stood in sharp contrast with the intolerance of Massachusetts.

Topics.—Rights of the colonists.—Ecclesiastical restrictions on political rights.—Rhode Island and religious freedom.

References.—Hinsdale, *American Government*, 44, 45; Cooke, *Virginia*, 169; Cross, *The Anglican Episcopate and the American Colonies*, 1–112.

9. The Court of Assistants.—The Court of Assistants exercised not only judicial but also legislative power. The first Court of Assistants organized in New England was formed at Charlestown, in Massachusetts, in 1630. Seven members were present, which number, according to the charter, was necessary in the beginning to give legal force to the acts of the court. This became the normal quorum; but afterwards, whenever there were nine assistants in the colony, a majority of them present might constitute a legal court. At the second meeting, it was decreed "that every third Tuesday there should be a Court of Assistants held at the governor's house." Three weeks thus became the interval of the regular meetings, which were, however, sometimes interrupted for longer periods.

Topics.—Powers of Court of Assistants.—Organization of first Court of Assistants.—Times of meeting.

References.—Palfrey, *History of New England*, I, 317–327; Fiske, *Civil Government*, 153, 154.

10. Trial by Jury.—Trial by jury was early adopted in all the New England colonies except New Haven. That colony, it was said, could find no authority for this form of trial in the Old Testament. In view of the difficulties encountered by juries in their attempts to reach unanimity where the law was indefinite, it was provided that after continued failure to agree, and after a conference with the court, "a majority of the jury should decide the issue; and, if they were equally divided, it should be determined by the sitting magistrates." In capital offenses special juries were summoned, and a unanimous verdict of guilt was required for conviction. Juries were employed in both the county court and the Court of Assistants, except in cases involving less than forty shillings. These cases were tried by the judges alone.

Topics.—Adoption of trial by jury.—Majority decisions.—Special juries.—Where and when not employed.

References.—Hinsdale, *American Government*, 45, 46; Fiske, *Civil Government*, 20, 21, 186.

FOR ADVANCED STUDY

Origin of Local Government in the Colonies.—Fiske, *Civil Government*, 16–21, 35–41, 57–77; *American Political Ideas*, 31–53; Doyle, *English in America*, iii, 10–17; Hosmer, *Anglo-Saxon Freedom*, 118–121.

The Government of Virginia, 1606–25.—Preston, *Documents*, 1–35; Lodge, *English Colonies*, 1–12; Fiske, *Old Virginia*, i, 177–188, 191–194; ii, 9–18, 23–30, 34, 35, 174–181, 203–218; Doyle, *English in America*, i, 101–184; Hart, *Contemporaries*, i, 218–225; Hosmer, *Anglo-Saxon Freedom*, 122–125; Thwaites, *Colonies*, 96–98, 100–104, 106–109.

The Governor and Company of Massachusetts Bay.—MacDonald, *Select Charters*, 37–42; Preston, *Documents*, 36–61; Ellis, *Puritan Age and Rule*, Chap. VII; Fiske, *The Beginnings of*

New England, 92–104; Fiske, *Civil Government,* 146–148; Winsor, *Boston,* i, 151–159; Palfrey, *History of New England,* i, 283–329; Doyle, *The English in America,* ii, Chap. III; Hart, *Contemporaries,* i, 366–382.

The Union of Church and State in New England.—Walker, *History of the Congregational Church in the United States,* Chaps. III–VI; Ellis, *Puritan Age and Rule,* Chap. VI; Fiske, *Beginnings,* 108, 109, 247–252; Palfrey, *History of New England,* i, 344–348, 383–389; Hart, *Contemporaries,* i, 330–333, 393–396; Lauer, *Church and State in New England (Johns Hopkins University Studies);* Winsor, *Boston,* i, 148–155; Doyle, *The English in America,* ii, 146–148.

Massachusetts as a Royal Province.—MacDonald, *Select Charters,* i, 205–212; Doyle, *English in America,* iii, 339–358, 372–383; Hutchinson, *History of the Colony of Massachusetts,* i, 372–387; Fiske, *Beginnings,* 271–278; Fisher, *The Colonial Era,* 218–225.

The Development of Religious Freedom in New England.—Arnold, *History of Rhode Island,* i, Chap. I–IV; Ellis, *Puritan Age and Rule,* Chap. VIII; Walker, *History of the Congregational Church,* 129–136; Fiske, *Beginnings,* 114–116; Hart, *Contemporaries,* i, 402–406; Schaff, *Progress of Religious Freedom,* 80.

The Beginnings of Popular Government in Connecticut.—Hart, *Contemporaries,* 415–422; MacDonald, *Select Charters,* i, 60–65; Preston, *Documents,* 78–84; *Old South Leaflets,* 8; Johnston, *Connecticut,* 56–64; Fiske, *Civil Government,* 155–208; Fiske, *Beginnings,* 127, 128, 135, 136; Levermore, *The Republic of New Haven,* 23.

The Government of New Netherlands.—O'Callaghan, *History of New Netherlands,* ii, Book VI, Chap. VIII; Fiske, *Dutch and Quaker Colonies,* i, 131–140, 162–201; Lodge, *English Colonies,* 286–292; Thwaites, *Colonies,* 198–202; Drake, *Making Virginia,* 123–138; Hart, *Contemporaries,* i, 529–537; Schuyler, *Colonial New York,* i, 11–26; MacDonald, *Select Charters,* i, 43–50.

The Beginnings of Government in Pennsylvania.—MacDonald, *Select Charters,* i, 183, 192–199; Fiske, *Dutch and Quaker Colonies,* ii, 114–118, 140–166, 316, 317; Hinsdale, *Old Northwest,* 98–103; Fiske, *Civil Government,* 151; Hart, *Contemporaries,* i, 554–558; Gordon, *History of Pennsylvania,* Chaps. III–IX;

Sharpless, *Two Centuries of Pennsylvania History*, Chaps. I–VI; Sharpless, *A Quaker Experiment in Government*, Chaps. II–VIII.

Lord Baltimore and the Charter of Maryland.—Preston, *Documents*, 63–77; MacDonald, *Select Charters*, i, 53–59; W. H. Browne, *Maryland*, Chap. II; Fiske, *Old Virginia*, i, 256–281; Doyle, *The English in America*, i, 195, 277–281; Lodge, *English Colonies*, 93–100; Drake, *The Making of Virginia*, 66–79; Eggleston, *The Beginners of a Nation*, 234–239.

Religious Toleration in Maryland.—MacDonald, *Select Charters*, i, 104–106; Hart, *Contemporaries*, i, 291–294; W. H. Browne, *Maryland*, 57–89; Fiske, *Old Virginia*, i, 301–318; Doyle, *The English in America*, i, 275–313; Hart, *Contemporaries*, i, 262–267.

The Early Decades of Government in the Carolinas.—MacDonald, *Select Charters*, i, 120–125, 149–168; McCrady, *History of South Carolina*, i, Chaps. I–V; Doyle, *English in America*, i, 328–380; Fiske, *Old Virginia*, ii, 270–337; Hart, *Contemporaries*, i, 275–280.

Oglethorpe's Rule in Georgia.—MacDonald, *Select Charters*, i, 235–248; Bancroft, *United States*, ii, 281–299; Winsor, *America*, v, Chap. VI; Fisher, *The Colonial Era*, 303–312; Hart, *Contemporaries*, ii, 110–126.

Taxation in the Colonies.—Lecky, *History of England*, i, 360; iii, 344, 345; Morley, *Walpole*, 167–169; *Annual Register*, 1765, 25; Bancroft, *History of the United States*, iii, 97–101, 114, 119, 176–186, 202, 208–210; Larned, *History of the United States*, 127–132, 144, 164, 177.

CHAPTER II

UNION AND INDEPENDENCE

11. The New England Confederacy of 1643.—It is possible that different groups of colonies may have had different preferences concerning forms of government. Nevertheless, they were all of one mind respecting the desirability of local self-government; and in the course of time they were all moved by the desire for union. Before the end of the seventeenth century many persons had entertained the thought that the colonies ought to be joined together in a common bond of unity and peace. In the first union contemplated, it was proposed to unite the colonies of similar theological views. The union known as the New England Confederacy of 1643 embraced the colonies of Massachusetts, Connecticut, New Haven, and Plymouth —in all, twenty-four thousand inhabitants. The central power in this confederacy was vested in a body of eight commissioners, two from each colony, who should meet once a year. The aim of the union was to provide concerted action for self-defense and for the advancement of the common welfare. The power to impose taxes remained with the governments of the several colonies; with them remained also the executive power. The body of the commissioners could only advise the colonial governments and recommend measures.

Topics.—Points regarding which the colonies were in agreement.—First union contemplated.—Colonies embraced in first union effected.—Organization of this union.—Purpose and powers.

References.—Fiske, *Civil Government,* 210; Hart, *Actual Government,* 48; Macy, *Our Government,* 36; Frothingham, *Rise of the Republic,* 29–66.

12. Steps toward a General Congress.—The first call for a general congress of the English colonies of America was made by the general court of Massachusetts. It was dated March 19, 1690. The following is a copy of the original order:

"Their majesty's subjects in these northern plantations of America, having of late been invaded by the French and Indians, and many of them barbarously murdered and are in great danger of further mischiefs: For the prevention whereof, it is by this court thought necessary that letters be written to the several governors of the neighboring colonies, desiring them to appoint commissioners to meet at New York on the last Monday of April next, then to advise and conclude on suitable methods in assisting each other for the safety of the whole land. And that the governor of New York be desired to signify the same to Virginia, Maryland, and parts adjacent."[1]

Each colony invited sent a cordial reply, but the circumstances of some of them did not permit them to be represented at the meeting. Commissioners of four colonies convened at New York. Maryland promised to coöperate in the undertaking; and the five colonies agreed to raise eight hundred and fifty-five men to subdue the French and Indian enemies. The quota of each colony was as follows: New York, 400; Massachusetts, 160; Plymouth, 60; Connecticut, 135; Maryland, 100.

This undertaking had its principal significance not in the results of the expedition against Canada, but in its suggestions as to possible achievements through union. The

[1] Quoted by Frothingham from *Massachusetts Archives,* xxxv, 321.

French in their zeal for extending their dominion in America offered a continual menace to the English colonies, and led the colonists to see that they had a common interest and must have a common council—one head and one purse.

The most notable of the early congresses was that convened at Albany in 1754. It was composed of twenty-five commissioners, representing seven colonies: Massachusetts, New Hampshire, Connecticut, Rhode Island, Pennsylvania, Maryland, and New York. It recommended a plan for the union of the colonies. This plan provided for a general government, "under which each colony might retain its constitution." The conspicuous features of the general government proposed were a grand council and a president general. The grand council was to be composed of deputies from the colonies, elected by the assemblies: Massachusetts Bay, 7; New Hampshire, 2; Connecticut, 5; Rhode Island, 2; New York, 4; New Jersey, 3; Pennsylvania, 6; Maryland, 4; Virginia, 7; North Carolina, 4; South Carolina, 4; in all, 48. The president general was to be appointed and supported by the crown. By a vote of the congress the plan was laid before the authorities of the several colonies, but it was nowhere adopted.

After the failure of the Albany plan, the antagonism between the American and the English views respecting the colonies became especially evident. It was generally believed that the Government in England was preparing a system of "inland taxation" for the colonies. This belief was confirmed by the resolutions read in the House of Commons, March 9, 1764, which declared that the Government proposed to raise a revenue in America by imposing a stamp tax on all documents used in court and on all legal documents of whatsoever kind. This declaration provoked opposition in America and led the assemblies of all the colonies to consider a proposition for joint action. In spite of the protests and petitions of the colonists, the proposed bill became a law in March, 1765. In the following October,

a congress of twenty-eight delegates, representing nine colonies, met in New York. Virginia, New Hampshire, Georgia, and North Carolina were in sympathy with the movement, but were not represented in the congress. After mature deliberation the congress adopted a declaration of rights and grievances. Through this declaration the colonists affirmed their affection for the king, claimed the rights and privileges of subjects in England, and acknowledged "all due subordination" to Parliament. They affirmed, moreover, that taxes could not lawfully be imposed upon them, except by their legislatures, and that they enjoyed the right of trial by jury in common with all other subjects of the king. There was no hint of a desire for separation. The assemblies of the colonies approved the action of the congress.

Topics.—First call for general congress of the colonies.—Meeting at New York.—Immediate purpose of the meeting.—Plans of the French in Canada.—Congress of Albany, 1754.—Albany plan for union.—Grand council and president general.—Fate of the Albany plan.—"Inland taxation."—News of the proposed stamp tax.—New York congress, 1765.—Action of New York congress.

References.—Fiske, *Civil Government*, 211; Hart, *Actual Government*, 48; Hinsdale, *American Government*, 64–71; Lalor, *Cyclopaedia*, i, 45; iii, 787; Macy, *Our Government*, 37.

13. Restrictions on the Economic Freedom of the Colonies.—By the navigation laws it was provided that all commodities imported into, or exported from, any English colony in Asia, Africa, or America should be carried in vessels owned in England or in the colonies, of which the masters and at least three-fourths of the mariners were English. The Virginians were annoyed by this restriction, for they had been accustomed to ship large quantities of tobacco in Dutch vessels; but the people of New England, in the course of time, found it a less inconvenience: it "stimu-

lated shipbuilding and the shipping interest in the colonies." [1] "In less than twenty years New England ships began to be sold in Old England. During the next few decades the business sprang up in every town along the New England coast and in many a riverside village for miles inland." [2]

By the act of 1660 it was provided that certain wares enumerated might be carried from the colonies to England, but to no other country. These articles were ginger, sugar, tobacco, cotton, wool, indigo, fustic, and other woods used for dyeing. This list was increased later by the addition of rice, tar, pitch, masts, hemp, copper, and beaver skins. With reference to the majority of these articles the restriction was in reality not a serious grievance for the colonists. The producers of tobacco and rice suffered most.

There were restrictions also on manufactures. Wool, yarn, and woolen cloth produced in the plantations might be manufactured for local needs, but not for a distant market. After 1732, hats might be manufactured for sale within the colony where they were made; but they might not be exported to England, to the Continent of Europe, or to the other colonies. No steel furnaces or slitting-mills might be erected. The prohibition, however, did not extend to working in iron on a small scale, as in making nails, bolts, and farm implements.

These restrictions helped to arouse the colonists to renounce their allegiance to the government of England. They were not, in fact, generally burdensome; yet this did not prevent them from becoming incentives to independence; for what they were in reality was less important than what they were thought to be by the colonists of the eighteenth century.

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[1] Hart, *Formation of the Union*, 46.

[2] Ashley, in *Quarterly Journal of Economics*, xiv, 5.

Topics.—Ships to be employed in trade with the colonies.—Effect of restriction on Virginians.—Effect in New England.—Restriction as to wares.—Restrictions on manufacturing.—General effect of restrictions on colonists.

References.—Hart, *Formation of the Union*, 46; Ashley in *Quarterly Journal of Economics*, xiv, 1–29; Hinsdale, *American Government*, 59, 60.

14. The Congress of 1774.—The increasing hostility of the colonists to the policy of the Government in England led them to continue to seek redress through united action. For this purpose a congress was assembled in Philadelphia, September 5, 1774. It was composed of fifty-five delegates representing twelve colonies. Georgia elected no delegates. The object of the meeting was to recover for the colonies their just rights and liberties, and to restore harmony between Great Britain and America. In a Declaration of Rights, adopted October 14th, the congress claimed "a free and exclusive power of legislation in their provincial legislatures, where their rights of representation could alone be preserved in all cases of taxation and internal polity," acknowledging only the vote of the king. The congress also voted addresses to the king, the people of Great Britain, and the inhabitants of British America; and at the same time agreed on a commercial policy of non-intercourse with Great Britain. The document containing the resolutions of the congress was entitled "The Association of the United Colonies," and was signed by fifty-two members. Addresses were made also to the people of Quebec, St. John's, Nova Scotia, Georgia, and East and West Florida, urging the adoption of the measures taken by the congress. The congress determined that another meeting should be held on the tenth of the following May, unless in the meantime there should be a redress of grievances. It was dissolved on the twenty-sixth of October. The principal achievement of

this and the preceding congresses was the union of the colonies. Union had become the basis of their hope of liberty.

Topics.—Purpose of Congress of 1774.—The Declaration of Rights.—"The Association of the United Colonies."—Proposition to neighbors on the north.

References.—Bryce, *American Commonwealth,* i, 17; Frothingham, *Rise of the Republic,* 331, 336–340, 358, 360–381, 408; Fiske, *Civil Government,* 212; Hart, *Actual Government,* 48, 49; Hinsdale, *American Government,* 71; Macy, *Our Government,* 37.

15. The Congress of 1775.—When the tenth of May, 1775, came, there had been no redress of grievances; on the contrary, actual hostilities had been begun in the encounter at Lexington. The Congress of 1775 met, therefore, on the tenth of May, in accordance with the adjournment of the previous year. All the colonies were represented, and many of the members had sat in the congress of the preceding year. Among the new members were George Clinton and Benjamin Franklin. Peyton Randolph, president of the last congress, and Charles Thompson, the secretary, were reëlected. The object of the meeting was "to obtain redress of American grievances," "to recover and establish American rights and liberties," "to restore harmony between Great Britain and her colonies," and "to advance the best good of the colonies." Since the meeting of the last congress much had happened to change the mental attitude of the colonists. In a few months they had been hurried on to a position which they had only dimly foreseen. The friction in Massachusetts had grown into active hostility. The fatal encounters of Lexington and Concord had made it necessary to choose between submission and war. But the congress was not ready to adopt either extreme. It would not block the way to reconciliation, but at the same time it resolved that the colonies should "be immediately put into

a state of defense." It adopted the colonial troops in Massachusetts, called them the army of the United Colonies, and made rules for their government. By a unanimous vote it elected George Washington to be the commander in chief. While it was waiting for a reply to its last petition to the king, the congress appeared to be somewhat uncertain of its position. After the arrival of this reply, in the form of a proclamation for suppressing rebellion and sedition, its duty was clear, and it assumed the powers of a sovereign body. It stood for the new nation that was coming into being.

Topics.—Condition in calling Congress of 1775.—Membership. —Object.—State of affairs in Massachusetts.—Army of the United Colonies.—The commander in chief.—Reply to petition to king.

References.—Frothingham, *Rise of the Republic,* 420–429; Fiske, *Civil Government,* 212; Hart, *Actual Government,* 49.

16. The Continental Congress.—The congress that undertook to express the common will of the colonies, and to direct their common affairs, before the adoption of the Articles of Confederation, was a revolutionary body. This means that it had come into existence by a method not prescribed in the laws under which the colonies existed. These laws provided for a government in each of the several colonies, but established no political connection between them. The colonies were dependent upon a common superior, but no law had been made providing for their union. In forming a union and creating a congress as the organ of the United Colonies, they went beyond the prescriptions of the law; their action was revolutionary. The delegates to the Continental Congress were appointed by the popular branch of the colonial legislature, by conventions called for that purpose, or "by committees duly authorized to make the appointment." There was, however, no agreement among the colonies respecting the number of

delegates each should send; and the delegates actually sent held among the several colonies no uniform ratio to the population. There was, moreover, no adequate information at hand for determining the relative importance of the colonies with reference either to wealth or to population. It was impossible, therefore, for the delegates to adopt a method of voting that would assign to each colony a number of votes in keeping with its importance. They finally resolved that each colony should have one vote.

The members of the second Continental Congress were appointed before the conflict at Lexington. They were appointed for no definite term, but were renewed from time to time in such a manner that the congress became a permanent body. Thus, before the declaration of independence "the people of the several colonies had established a national government of a revolutionary character"; and "when such a government has been instituted for the accomplishment of great purposes of public safety, its powers are limited only by the necessities of the case out of which they have arisen, and of the objects for which they were to be exercised. When the acts of such a government are acquiesced in by the people, they are presumed to have been ratified by the people. To the case of our Revolution these principles are strictly applicable throughout. The congress assumed at once the exercise of all the powers demanded by the public exigency, and their exercise of those powers was fully acquiesced in and confirmed by the people." [1]

This Government was imperfect in its organization in many particulars. It could not execute its decrees directly; it had no proper national tribunal; and it had no independent revenues. The adoption of the Declaration of Independence made no important change in the Government. It did not increase the number of institutions, nor did it render

[1] Curtis, *Constitutional History of the United States*, i, 25, 26.

more perfect the civil machinery. After the declaration of independence, however, the congress was the legal sovereign in the United Colonies, now become the United States of America. The Continental Congress which held in its hand the destiny of the new nation was composed of about twenty-five men, and "their number often fell below twenty-five, but never rose to more than thirty-five."[1]

Topics.—Character of Continental Congress.—Political position of the colonies.—Appointment of members.—Reason for the rule of voting.—Significance of Congress with respect to government.—Imperfections of the government established.—Number of members.

References.—Curtis, *Constitutional History of the United States*, i, 1–85; Bryce, *American Commonwealth*, i, 16–24; Fiske, *Civil Government*, 212–220; Lalor, *Cyclopædia*, i, 589; Frothingham, *Rise of the Republic*, 413–489.

17. The Project of Independence.—The colonists who observed to what an extent the several colonies, prior to 1775, had acted together, saw that the next step must be independence. But on the question of a final separation from Great Britain there was a great variety of opinions. The Tories were united against it. Many others thought that time would bring redress of grievances, and consequently wished delay. In the last five weeks of 1775, the Pennsylvania assembly, the New Jersey assembly, the Maryland convention, and the North Carolina provincial congress declared their opposition to the project of independence. Hitherto, the general congress had made no affirmation in favor of separation. But events soon brought the colonists into a position where an announcement of their determination to be free was inevitable. Separation from Great Britain became the theme of discussion in the army, at the fireside, in the newspapers, and in numberless pamphlets. When

[1] Friedenwald, *The Continental Congress*, in Report of American Historical Association, 1894, p. 231.

the question first came up in congress in the fall of 1775, the opposition was strong; but it grew gradually weaker as independence was more freely and fully discussed throughout the colonies. Before final action was taken by the congress, the majority of the people were known to favor independence. On the evening of July 4, 1776, the committee of the whole,[1] that had been considering the Declaration, reported to the congress the draft that had been agreed upon. This was then adopted in the congress by the unanimous vote of twelve colonies. Five days later New York approved the Declaration, which thus became the first utterance of the United States of America.

The events of the years immediately following the congress in New York led to a rapid development of opinion among the colonists. In this period the idea of separation from the mother country found positive expression; the formation of a permanent union among the colonies became a prominent object of popular ambition; and the establishment of an independent government appeared to many persons as quite possible. Two parties became clearly recognized. Those who wished the colonies to remain under the dominion of England were called Loyalists, Tories, and Friends of Government; those who opposed the policy of England, and looked forward to independence were called Whigs, Patriots, and Sons of Liberty. The culmination of this movement was the Declaration of Independence. It is worthy of note that, as the colonists advanced toward the position of an independent nation, their achievements were made in a significant order. First, they sought union, that they might be of one mind and have one policy in dealing with the mother country. In the second place, when union had been attained, it was in union that the Declaration of Independence was made. In the third place, it was as one

[1] See page 91.

body that they fought to win their independence, and to cause it to be recognized.

Topics.—Indications of independence.—Parties and opinions respecting independence.—Attitude of congress.—The declaration before congress.—Approval by New York.

References.—Frothingham, *Rise of the Republic,* 403–454; Hart, *Actual Government,* 49; Macy, *Our Government,* 37; Bancroft, *History of the United States,* ii, 85, 340, 528; iv, 160, 426; v, 548.

18. The "Right" of Revolution.—At this point arises a general question relating to what is termed the "right" of revolution. In speaking of the transfer of sovereignty over the colonies from Great Britain to the colonies themselves, Cooley says: "The authority of the British crown over the colonies was rejected, and a government created by the people of the colonies for themselves, and this afterward radically changed and reformed in the adoption of the Federal Constitution under the great and fundamental right of every people to change their institutions at will—in other words, under the right of revolution."[1] For a correct understanding of this statement it is to be noted that the colonies were not a people, nor even a nation; they were a part of the English nation and subject, like any other part, to the sovereign authority of that nation. The rights that are considered in strictly political discussion are such as are created by, and exist under, law; and the sovereign over the colonies had adopted no law creating the right of any part of the nation to secede. Under this meaning of the term there is clearly no right of revolution. But revolutions do happen, and through them independent nations sometimes come into existence; but there is no right of revolution except such a moral right as may be grounded on expediency or utility. The right under which the colonists acted was of this kind. The king "had refused his assent

[1] *Constitutional Law,* 25.

to laws, the most wholesome and necessary for the public good," and had done a long list of injuries, as set forth in the Declaration of Independence, and was "unfit to be the ruler of a free people." In view of all these things, the colonists thought it expedient and useful to separate themselves from the authority which they had hitherto acknowledged as their sovereign superior. A nation has always the right to make changes in the form of its government. In its constitution it provides a method through which the legally constituted authorities may make the desired changes in accordance with a prescribed method, or it may authorize any part of its inhabitants to do this; but this action is not properly termed a revolution. A revolution is a movement involving changes in the government by methods not prescribed by law and not sanctioned by any right which the law has created. A revolution may be advantageous to the persons engaging in it and not involve any serious disadvantage to those against whom it is made. In a case like this, where the advantages far outweigh any possible disadvantages, it may perhaps be proper to affirm that a body of people carrying such a revolution to a successful issue possesses a moral right of revolution.

Topics.—Cooley on "right" of revolution.—Meaning of term revolution.—Changes in government.—Methods of making changes.

19. The Declaration of Independence.—With the publication of this declaration, representatives of political societies hitherto dependent assumed the powers of a sovereign. As a specific instance of the origin of sovereignty, it may be noted that here, in harmony with the general law, sovereignty was acquired by a people, or a part of a people, by assuming it. The Declaration of Independence, adopted by a congress that was supported by the governments of the several colonies, was an announcement of a revolution, and became the basis of a new state. It announces that some-

times "it becomes necessary for one people to dissolve the political bands which have connected them with another"; and it is inferred from the action taken in this case that the determination of the time when it is necessary to dissolve these bands is left to the communities preparing to take this step.

Among the statements which the makers of the Declaration considered as self-evident truths are the following:

1. That all men are created equal.

2. That all men are endowed with certain inalienable rights.

3. That governments are instituted to secure these rights.

4. That governments derive their just powers from the consent of the governed.

5. That it is the right of a people to abolish any form of government whenever it becomes destructive of these ends; or whenever it evinces a design to bring the governed into submission to a despotism.

6. That it is the right of a people to institute a new government, with such principles and with such an organization as shall seem to it most likely to secure its safety and happiness.

The bulk of the document is in the nature of a preamble; the declaration itself is contained in the final paragraph, and is as follows:

"We, therefore, the representatives of the United States of America, in general congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these colonies, solemnly publish and declare, That these united colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought

to be, totally dissolved; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And, for the support of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor."

This "declaration was not only the announcement of the birth of a people, but the establishment of a national government; a most imperfect one, it is true, but still a government in conformity with the limited constituent powers which each colony had conferred upon its delegates in congress. The war was no longer a civil war; Britain was become to the United States a foreign country. Every former subject of the British king in the thirteen colonies now owed primary allegiance to the dynasty of the people, and became a citizen of the new Republic; except in this, everything remained as before; every man retained his rights; the colonies did not dissolve into a state of nature, nor did the new people undertake a social revolution. The management of the internal police and government was carefully reserved to the separate States, which could, each for itself, enter upon the career of domestic reforms. But the States which were henceforth independent of Britain were not independent of one another: the United States of America, presenting themselves to mankind as one people, assumed powers over war, peace, foreign alliances, and commerce."[1]

Topics.—Origin of sovereignty.—Adoption of the Declaration of Independence.—Nature of the Declaration.—The "self-evident truths" expressed in it.—Character of final paragraph.

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[1] Bancroft, *History of the United States*, iv, 452. Note that the word "people" is here used where the term "nation" would more correctly express the idea to be conveyed.

References.—Bancroft, *History of the United States,* iv, 452; Channing, *History of the United States,* 203–206; McLaughlin, *History of the American Nation,* 194–196; Friedenwald, *The Declaration of Independence,* 99–207; 262–279.

20. The New Position.—The Declaration of Independence, preceded by a union of the colonies and followed by a successful war, established a new nation. Allegiance to the sovereign of Great Britain was dissolved, and a new sovereign was coming into being. The change was not prescribed by law, but was revolutionary. The supreme power over the former British subjects in America had been held by the king, lords, and commons; by the act of independence this power was assumed by some part or parts of the community thus set free. But one may not easily determine what part or parts became clothed with the supreme power, and thus became the sovereign in the new American nation. The political revolution was for many years in process; there was no constitution, no settled order of procedure, and no established hierarchy of institutions. Between the act of independence and the adoption of the Constitution there was no legal description of the holder of supreme power. These thirteen years were the years of transition from the established sovereignty of Great Britain to the dominion of the sovereign described in the Constitution of the United States. The colonies had become united. In union they had won independence, and had won it for the whole people as one body. They had confirmed this independence by a treaty of peace made with the mother country in Paris, in 1783. A congress had been formed and maintained, and this was the only institution through which the will of the whole nation found expression. And this congress, that had raised an army and appointed a commander in chief, that was the source of all military power and all authority in general legislation, had many qualities

of the legal sovereign. "Unconsciously to themselves the people of the United States were absorbed into a new nationality by the very fact of their combined resistance to Great Britain. They carried on war; they officered and maintained armies; they commissioned vessels of war; they borrowed money and issued evidences of debt therefor; they created prize courts; they acquired territory and determined what the nature of its civilization should be; they made treaties with foreign powers; and in many ways, both before and after the adoption of the Articles of Confederation, they exercised the highest powers of sovereignty."[1]

Topics.—Process of forming the new nation.—Duration of the Revolution.—Congress as the sole national institution.

References.—Bancroft, *History of the United States*, vi, 441–451; Frothingham, *Rise of the Republic*, 561–610.

FOR ADVANCED STUDY

The New England Confederation, 1643.—Preston, *Documents*, 85–95; MacDonald, *Select Charters*, i, 94–101; Fiske, *Beginnings of New England*, 155–160; Palfrey, *History of New England*, i, 623–634; Frothingham, *Rise of the Republic*, 33–71; Hart, *Contemporaries*, i, 447–454.

The Colonial Congress at Albany, 1754.—MacDonald, *Select Charters*, i, 253–257; *Old South Leaflets*, 9; Franklin, *Autobiography*, 231–233; Frothingham, *Rise of the Republic*, 29, 131–151; Fiske, *New France and New England*, 279, 280; Hart, *Contemporaries*, ii, 357–360; Bancroft, *United States*, ii, 385–388.

The Continental Congress.—Frothingham, *Rise of the Republic*, 359–391; Hildreth, *United States*, iii, 38–46; Bancroft, *United States*, iv, 23, 24, 30–36, 61–77; Sloane, *The French War and The Revolution*, 170–176; Hart, *Contemporaries*, ii, 434–441; Lecky, *History of England*, iii, 443–455; Morse, *Adams*, Chap. II; Hosmer, *Adams*, 307–321; J. Adams, *Works*, i, 149–164; ii, 365–400; MacDonald, *Select Charters*, i, 362–367.

[1] Miller, *Lectures*, 36, 37.

The Second Continental Congress.—MacDonald, *Select Charters*, i, 374–385; Bancroft, *United States*, iv, 190–192, 199, 200, 204–213; Morse, *Adams*, 87–100; Washington, *Writings*, ii, 476–493; Adams, *Works*, ii, 415–418; Lecky, *History of England*, iii, 465–472; Fiske, *American Revolution*, i, 132–136; Lodge, *Washington*, i, 131–133; Sloane, *French War and the Revolution*, 195–199; H. von Holst, *Constitutional Law*, 6–12; Johnston, *United States*, 56, 57; Frothingham, *Rise of the Republic*, 419–428.

The Declaration of Independence.—MacDonald, *Select Documents*, ii, 1–6; *Old South Leaflets*, 3; Larned, *Ready Reference*; Frothingham, *Rise of the Republic*, 513, 532–558; Morse, *Jefferson*, 32–40, and *Adams*, 124–129; Hildreth, *United States*, iii, 132–138; Bancroft, *United States*, iv, 112–125, 435–452; Friedenwald, *The Declaration of Independence*.

The Treaty of Paris, September 3, 1783.—MacDonald, *Select Documents*, i, 15–21; Lecky, *History of England*, iv, 218–232, 243–255, 273–289; Morse, *Franklin*, 357–365; Bancroft, *United States*, v, 525–580; Channing and Hart, *Guide to American History*, 303, 304.

The Right of Revolution.—Cooley, *Constitutional Law*, 25, 26; Hart, *Actual Government*, 37.

Political Institutions of the Colonies.—See Channing and Hart, *Guide to American History*, 312–314.

Committees of Correspondence and their Influence.—McLaughlin, *History of the American Nation*, 183; Sloane, *The French War and the Revolution*, 161, 162; Hart, *Formation of the Union*, 57.

The Adoption of the Articles of Confederation.—Hart, *Contemporaries*, ii, 539–543; Fiske, *The Critical Period*, Chap. III; Walker, *The Making of the Nation*, 6; Hart, *Formation of the Union*, 93–95.

CHAPTER III

UNDER THE ARTICLES OF CONFEDERATION

21. The Articles of Confederation.—The first important step toward the organization of a national government was the formation of the Continental Congress. The second step was the adoption of the Articles of Confederation. The Articles of Confederation were framed by the Congress and proposed to the legislatures of the several States. These bodies then considered and approved them, and authorized their delegates to ratify them in Congress. On July 9, 1778, the delegates of eight States signed a form of ratification that had been drawn up previously. These States were: New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, Virginia, and South Carolina. The other States ratified the articles on the following dates: North Carolina, July 21, 1778; Georgia, July 24, 1778; New Jersey, November 26, 1778; Delaware, May 5, 1779; Maryland, March 1, 1781. Maryland had wished to withhold her ratification until Virginia and other States should surrender to the Confederation their claims to northwestern lands. The cession of these lands was, however, not completed and accepted until much later. With the ratification of Maryland, the Articles of Confederation became the Constitution, or the fundamental law, of the new nation.

The need of a general constitution was seen even before the adoption of the Declaration of Independence. On July

21, 1775, Franklin submitted to Congress a draft of Articles of Confederation and Perpetual Union. This project was not adopted; but a year later, June 12, 1776, Congress appointed a committee of thirteen, one member from each colony, "to prepare and draft the form of a confederation to be entered into." This committee reported about a month after its appointment. During the following year the form it had drawn up was amended, and adopted by Congress, November 15, 1777. This was the form that was proposed to the legislatures and ultimately ratified by the delegates in Congress. The name of this nation was stated and adopted in the first Article. It was, "The United States of America." Since its formation, similar names have been adopted by other nations on this continent. The United States of Mexico, the United States of Colombia, the United States of Venezuela, and the United States of Brazil have apparently imitated the title of this nation.

Under the Articles of Confederation each of the States in the Union retained "every power, jurisdiction, and right" which was not expressly delegated to Congress. A similar provision was embodied in Article 10 of amendments of the Constitution of 1787. According to this article of the Constitution, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." One difference between these two fundamental laws, the Articles of Confederation and the Constitution, in this regard, was that less power was delegated to the United States by the Articles of Confederation than by the Constitution. This first union of the States was called a "league of friendship" "for their common defense, the security of their liberties, and their mutual and general welfare" (Article 3). Among the States there was to be freedom of trade and freedom of ingress and egress for persons (Article 4); and the free inhabitants of each State were "entitled to all privileges

and immunities of free citizens in the several States" (Article 4). This provision helped to strengthen the sense of common nationality.

The government established by the Articles of Confederation was extremely simple in form. A single representative body, called the General Congress, held all the powers, executive, legislative, and judicial, that had been granted to the United States. The Congress was composed of delegates appointed annually by the States, in such manner as each State might direct. Each State might recall its delegates, or any of them, at any time within the year, and send others in their stead for the remainder of the year. No State could be represented by less than two delegates nor by more than seven; and no person could be a delegate for more than three years in any period of six years. No delegate could hold any office under the United States, to which was attached a salary or emolument of any kind. Each State maintained its delegates; and in determining questions in Congress each State had one vote, whatever the number of its delegates. All bills affecting international relations, money, and credit, or revenues for carrying on the Government, required the votes of at least nine States. The Congress met every year, the session beginning on the first Monday in November; and it might not adjourn for more than six months. It had authority to appoint such committees and civil officers as might be necessary for managing the affairs of the United States. The Congress might appoint one of their number to preside, provided that no person should be allowed to serve in the office of president more than one year in any term of three years (Article 9). In the recess of Congress, the government was carried on by a "Committee of the States," consisting of one delegate from each State. The conduct of the several departments by committees soon made evident their inefficiency, and the necessity of individual heads of departments.

Under the Articles of Confederation, the State could not enter into any treaty or alliance with a foreign power without the consent of Congress; it could not maintain a naval or a military force, except militia for the defense of the State and its trade; it could not engage in any war without the consent of Congress, unless its territory was actually invaded by enemies or was in imminent danger of invasion. In case a military force was raised by any State for common defense, the legislature of the State was empowered to appoint all officers of, or under, the rank of colonel. In such a case, all expenses incurred for the common defense or general welfare, and allowed by Congress, were defrayed out of the common treasury, which was supplied by the several States in proportion to the value of their real estate. The taxes for raising the State's contribution to the general treasury were levied by authority of the State's legislature.

The Congress was the sole important organ of the Confederation. It alone had authority to deal with external relations; it was empowered to make war and peace; it could send and receive ambassadors; it could negotiate treaties and alliances; it was empowered to control captures and prizes made by the land or naval forces of the United States; and it could establish courts for the trial of piracies and other crimes committed on the high seas. The Congress was the final authority in all boundary disputes between States, and in all controversies concerning land titles. It could control coinage, fix weights and measures, regulate trade with the Indians, establish and manage post offices, and govern and direct the land and naval forces. In carrying out its legitimate functions Congress was restrained, and its practical power greatly curtailed, by the requirement of a two-thirds vote for adopting all important measures, and by the fact that the treasury of the Confederation was supplied not by taxes imposed by Congress, but by

contributions from taxes levied by the legislatures of the several States. The legislatures of the States, moreover, could control the commerce of the country. They could levy any import or export duties they thought advisable, provided they did not thereby interfere "with any treaties then proposed, or touch the property of the United States, or that of any other State. The United States had no power of taxation, direct or indirect."

The Articles of Confederation had many weak points. The *first* was that the vote of nine States was required for making any important law. The *second* was the impossibility of establishing a consistent national policy with respect to commerce. The *third* was the fact that the General Government had no independent source of revenue, and consequently no independent means of enforcing its will. All its revenues were contributions by the States. There was the form of a national government, but the necessary powers were wanting. Congress could not act upon the individual citizens; it could reach them only through the States. It could make treaties with foreign powers, but it could not enforce them. It might demand soldiers from the States, but it could not coerce the States to accede to these demands.

These elements of weakness were sufficient causes of the failure of the Articles of Confederation as the fundamental law of the new state.

Topics.—First step toward organization of a national government.—Second step.—Making the Articles of Confederation.—Ratification by States.—Maryland's reason for delay.—Franklin's draft.—Formation of the draft that was adopted.—Power of States under Articles of Confederation.—How different from their powers under the Constitution.—Relation of States to one another.—Nature of the government established.—Delegates.—Voting.—Times of meeting.—Presiding officer.—Government between sessions.—Position of the State.—Powers of Congress under the Articles of Con-

federation.—Restrictions on powers of Congress.—Weak points in Articles of Confederation.

References.—Curtis, *Constitutional History of the United States,* i, 94–103; Fiske, *The Critical Period of American History,* 93; *Articles of Confederation*; Bancroft, *United States,* v, 201–208; Fiske, *Civil Government,* 213–220; Hart, *Actual Government,* 49; Lalor, *Cyclopædia,* i, 574; Macy, *Our Government,* 38; Miller, *Lectures,* 3; Frothingham, *Rise of the Republic,* 569–584.

22. State Constitutions under the Articles of Confederation.—After independence had been declared, it became necessary to reconstruct the governments of the States. The States were starting on a new political career, with a new theory as to the source of supreme power. They could no longer make use of the idea that power descended to them from the king; but they held that power resided originally in the people, and that officers of government who exercised it derived it from the people. The acceptance of this view was the most important part of the Revolution. Long before this time, it had been customary in England to elect some of the members of Parliament—namely, the members of the House of Commons; but, under the law, the king had the right of absolute veto, which was a sufficient indication that the supreme legal authority was not in the people. Through the Revolution the thirteen colonies had become thirteen States, and were obliged to modify their constitutions and adapt them to their new position. The reforms of the State governments were undertaken on the recommendation of the General Congress. Provisional changes were made in the government of Massachusetts in July, 1775; in the government of New Hampshire in January, 1776; and in the government of South Carolina in March, 1776. The permanent new constitutions, or the constitutions with their permanent modifications, were adopted in the several States as follows: In New Jersey, Delaware, Pennsylvania, Maryland, and North Carolina, in

1776; in Georgia and New York, in 1777; in South Carolina, in 1778; in Massachusetts, in 1780; in New Hampshire, in 1784; and in Rhode Island, Connecticut, and Virginia, much later.

Under the State constitutions, while the Articles of Confederation were in force, the age of twenty-one was everywhere required as a condition of voting. Residence in the town or district also was required, except in Virginia and South Carolina. In these States, "it was enough to own in the district or town a certain freehold or 'lot.'" In Virginia, South Carolina, and Georgia only white men could vote; but in South Carolina the octoroon, although descended from a slave, enjoyed this privilege. The question of color was not raised in the other ten States. Any white inhabitant "of any mechanic trade" could vote in Georgia; but in each of the other States the possession of a certain amount of property was required. In Massachusetts it was an amount equivalent to $200; in Georgia, to $250. In some of the colonies membership in the Church had been required as a condition prerequisite for exercising political rights. But in the course of time this qualification was dropped, and the public affairs of the various groups were organized on a purely secular basis.

Topics.—Need of reconstructing governments of States.—New source of power.—Source of governmental power in England.—Provisional and permanent changes in State constitutions.—Voting in States under Articles of Confederation.

References.—Hinsdale, *American Government*, 79; Channing and Hart, *Guide*, 306–308.

23. The State Legislatures.—The assemblies of the colonies remained as the lower houses of the legislatures of the States. Their times of meeting and periods of election were more definitely fixed, and a more equitable distribution of representation was established. In New England, the

towns continued to elect representatives; in Virginia, the counties and boroughs. In South Carolina the members of the assembly were elected for two years; in all other States they were elected for one year.

Eleven of the States maintained legislatures of two houses. Pennsylvania and Georgia placed all legislative power in a single house. Pennsylvania was moved in this matter by the influence of Franklin. The senate as it existed in the other States had different terms. The term of election to the senate was one year, in six States; two years, in South Carolina; three years, in Delaware; four years, in New York and Virginia; and five years, in Maryland. In New York and Virginia the senate renewed one-fourth of its members each year; in Delaware, one-third of its members each year. Maryland elected her senators by an indirect election once in five years, and left the members to fill any vacancy that might occur between the stated periods of election.

Topics.—State legislatures under Articles of Confederation.—Bicameral system.—The State senates.

References.—Channing and Hart, *Guide*, 306–308.

24. The Governors of States.—Both direct and indirect elections were employed in choosing governors. In the New England States the people voted for the governor directly. In New York the governor was elected by owners of freeholds that were each worth at least $250. In Georgia, he was elected by representatives of the people; in Pennsylvania, by the council and the assembly voting together; and in the other six States, by a joint ballot by the two houses of the legislature.

Certain property qualifications were required for governors, for senators, and for representatives, except in Pennsylvania. In New York the governor was required to be a freeholder. In Massachusetts he should have a free-

hold worth about $3,300; in New Hampshire, a freehold worth about half this sum; in South Carolina, a plantation worth, including slaves, about $43,000. The governor was chosen in New York and Delaware for three years; in South Carolina, for two years; and in all the other States, for one year. The Southern States placed restrictions on the reëlection of the governors; but in Massachusetts, Connecticut, and Rhode Island they were often reëlected for a number of years in succession. In most of the States the governor was given no power of veto; but in Massachusetts he was given the limited veto that had been devised in New York and there placed in the hands of the council. A bill might be passed over the veto of the governor of Massachusetts, provided a majority of two-thirds of each house voted for it when presented after the veto.

The spirit that animated the people of the new States was quite as noteworthy as the institutions they created. Their establishment of religious liberty and their determination that the church should be separated from the state marked the beginning of a new course in social progress.

Topics.—Methods of election.—Qualifications required of governors.—Terms of governors.—The veto.—Spirit of the people.—Religious liberty.

References.—Hart, *Actual Government*, 27; McLaughlin, *History of the American Nation*, 54–59, 65.

25. The Weakness of the General Government, and the Remedy.—The General Government under the Articles of Confederation had less power than the Continental Congress might have exercised before the adoption of these Articles. The Continental Congress, in its great undertaking, was practically a sovereign body. It was "possessed of such large, indefinite powers, that, upon principles of public necessity, it might have assumed, in a great emergency, to hold a direct relation to the internal concerns of

any colony." The Articles of Confederation had curtailed this power. The central authority could not touch the individual citizen, nor could "it act upon the internal concerns or conditions of a State." The central Government manifested its weakness, especially in three ways:

1. In its attitude toward internal affairs, particularly toward popular disturbances in the several States. These disturbances showed some of the people mistaking themselves for the whole people. Under this delusion, a minority in Massachusetts, finding that the institutions bore heavily upon them, concluded that they were the people, and that they could set aside the institutions which the people had created. The citizens had apparently learned to desire liberty, but they had not learned to respect the will of the majority. The fears that were excited by these popular disturbances, especially by Shay's rebellion, made it evident that the liberty which had been won was endangered by the lack of authority. Out of this thought rose the demand for a more effective national government.

2. In its inability to control the foreign affairs of the country, particularly the trade with foreign nations and the trade among the several States. The power to regulate trade was in the hands of the States, and was subject to the single restriction that the States should not levy imposts or duties that might interfere with the stipulations in any treaties made "in pursuance of any treaties already proposed by Congress to the courts of France and Spain."

3. In its lack of authority to manage and dispose of public lands and to admit new States into the Union.

Washington, as commander in chief of the Colonial Army, was in a position to see clearly the weakness of the organization provided by the Articles of Confederation and was persistent in his advocacy of a stronger central government. The Confederation appeared to him to be little more than the shadow without the substance, and Congress

merely a nugatory body. Hamilton declared that the Confederation was "unequal to a vigorous prosecution of the war, or to the preservation of the Union in peace." An attempt on the part of the Confederation to coerce the States would probably have resulted in a dissolution of the Union. The incapacity of the Government became more manifest from month to month; and, in view of its helplessness, an increasing number of persons accepted the idea that a new constitution was needed to insure the welfare of the nation. In January, 1784, Washington wrote that an extension of Federal powers "would make us one of the most wealthy, happy, respectable, and powerful nations that ever inhabited the terrestrial globe. Without this, we shall soon be everything which is the direct reverse." "For my own part, although I am returned to, and am now mingled with, the class of private citizens, and like them must suffer all the evils of a tyranny, or of too great extension of federal powers, I have no fears arising from this source, in my mind; but I have many, and powerful ones indeed, which predict the worst consequences from a half-starved, limping government, that appears to be always moving upon crutches and tottering at every step."[1] Among the reasons for establishing a stronger central government, four were especially conspicuous: (1) To regulate the foreign commerce of the country; (2) to control and colonize the public domain; (3) to provide independent means for acquiring a revenue; (4) to subject domestic trade to just and uniform regulations and to put an end to the tariff war among the States. Without adequate powers respecting these matters, the Confederation was falling into ruins. There seemed to be nothing before it but the prospect of speedy dissolution. The formation and adoption of a new fundamental law appeared to be necessary

[1] Washington to Harrison, Jan. 18, 1784.

to insure good government and the continuance of the Union.

Topics.—Continental Congress before the Articles of Confederation.—Weakness of the central Government respecting internal disturbances; respecting foreign affairs; respecting disposal of public lands.—Washington's view of its weakness.—Reasons for establishing stronger central government.

References.—Fiske, *Civil Government*, 216–220; Miller, *Lectures*, 3–5, 21, 22; *Articles of Confederation.*

26. The Constitutional Convention.—The full coöperation of the several colonies necessary to make a new constitution possible was reached only by a slow advance. In 1785 commissioners from Maryland and Virginia met to regulate the navigation of Chesapeake Bay and other waters common to these two States. But it became evident that they could not reach the proposed object without the coöperation of the other States. This failure furnished an additional reason for a closer union. In January, 1786, the legislature of Virginia appointed eight commissioners to meet with the commissioners from other States to consider matters relating to the regulation of trade. The commissioners were required to report to the several States a bill covering this subject, with the purpose of having it adopted by the States, thus providing for a common policy to be carried out by Congress. The proposed meeting was held in September, 1786, at Annapolis. Commissioners were present from New York, New Jersey, Pennsylvania, Delaware, and Virginia—five States. The Annapolis meeting went beyond its original purpose and recommended a general convention of the States, to be held in Philadelphia on the second Monday in May, 1787. The purpose of the Philadelphia meeting, as stated in the resolution recommending it, was "to take into consideration the situation of the United States, to devise such further provisions as shall

appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union, and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them, and afterward confirmed by the legislatures of every State, will effectually provide for the same."

The Annapolis meeting sent reports of its action to the several States and to Congress. In February, 1787, Congress adopted the idea of a general convention, and embodied it in the following resolution:

"That, in the opinion of Congress, it is expedient that on the second Monday in May next a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of government and the preservation of the Union."

All the States but Rhode Island acted on the resolution of Congress and sent delegates to the convention. There was no restriction on the number of delegates the several States could send; but two were necessary to entitle the State to vote.

The convention which assembled in obedience to this call by Congress was organized in May, 1787. It elected George Washington president of the convention, and adopted the method of voting that had been used in Congress. It was the will of the convention that nothing spoken in the meetings should "be printed or otherwise published without leave." It was very early seen that the desired end could not be reached by simply amending the Articles of Confederation, but that an essentially new form of government must be provided. As a result of the

labors of the convention during the four months of its sessions, it sent to Congress in September the form, or draft, of a new constitution. The convention sent to Congress also resolutions recommending that the draft of the Constitution should be submitted to State conventions for their consideration and ratification. The resolutions transmitting the draft of the Constitution to Congress were as follows:

"In Convention, Monday, September 17, 1787.

"*Resolved*, That the preceding Constitution be laid before the United States in Congress assembled, and that it is the opinion of this convention that it should afterward be submitted to a convention of delegates, chosen in each State by the people thereof, under the recommendation of its legislature, for their assent and ratification; and that each convention, assenting to and ratifying the same, should give notice thereof to the United States in Congress assembled.

"*Resolved*, That it is the opinion of this convention that, as soon as the conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the States which shall have ratified the same, and a day on which the electors should assemble to vote for the President, and the time and place for commencing proceedings under this Constitution. That after such publication the electors should be appointed, and the senators and representatives elected; that the electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed, and directed, as the Constitution requires, to the secretary of the United States in Congress assembled; that the senators and representatives should convene at the time and place assigned; that the senators should appoint a President of the Senate for the sole purpose of receiving, opening, and counting the votes

for President; and that, after he shall be chosen, the Congress, together with the President, should, without delay, proceed to execute this Constitution.

"By the unanimous order of the convention.

"GEORGE WASHINGTON, *President.*

"WILLIAM JACKSON, *Secretary.*"

Topics.—Maryland and Virginia commissioners meet, 1785.—Annapolis meeting, 1786.—Philadelphia meeting, 1787.—Resolution by Congress, 1787.—Constitutional Convention organized, 1787.—Washington's part in the convention.—Duration and work of the convention.—Resolution submitting completed draft.

References.—Bryce, *American Commonwealth*, i, 21–25; Fiske, *Civil Government*, 217; Hart, *Actual Government*, 50; Hinsdale, *American Government*, 87–106; Lalor, *Cyclopædia*, i, 626–637; ii, 672; Macy, *Our Government*, 38–41; Bancroft, *United States*, vi, Book III; Frothingham, *Rise of the Republic*, 587–610.

27. The Adoption of the Constitution.—By the seventh article of the proposed Constitution the convention had agreed that the ratification of the conventions of nine States should be sufficient to establish the Constitution and make it valid for the States ratifying it. The first nine States ratified the Constitution on the following dates:

Delaware, November 7, 1787;
Pennsylvania, December 12, 1787;
New Jersey, December 18, 1787;
Georgia, January 2, 1788;
Connecticut, January 9, 1788;
Massachusetts, February 6, 1788;
Maryland, April 28, 1788;
South Carolina, May 23, 1788;
New Hampshire, June 21, 1788.

With the adoption by New Hampshire, the form drawn up by the convention was established as the Constitution of the United States of America. The other States ratified

it a little later; Virginia, on June 26, 1788, and New York, on July 26, 1788. Information of the ratification by North Carolina and Rhode Island was not received by Congress until 1790.[1]

The adoption of the Constitution completed the Revolution. A new nation had come into existence and organized for itself a national government.

A new central government was formed by the adoption of the Constitution. This new Government was more independent than that which had existed under the Articles of Confederation. It was not obliged to ask the several States for money with which to meet its expenses, for it could tax the people directly. It could reach individual citizens in many ways. It could arrest them for crime and bring them for trial before its courts; it could call them into the army and the navy. It could, moreover, declare war and make peace. It could regulate commerce with foreign nations, among the States, and with the Indian tribes. Besides the central Government there existed at this time also the governments of the States, the governments of the counties, the governments of the towns and cities. These forms of government, with slight modifications, have continued to the present. They are all popular governments; that is, the power which is exercised by their officers is derived from the people. If we examine them, we shall find that they are all representative governments. The officers are elected from the people by the people, and are elected for a definite and specified term. Under the Articles of Confederation, the States had united "for their common defense, the security of their liberties, and their mutual and general welfare." A somewhat more specific purpose of the new Government was set forth in the preamble to the Constitution. It was as follows: (1) To form a more

[1] The date of the ratification by North Carolina was November 21, 1789; by Rhode Island, May 29, 1790.

perfect union; (2) to establish justice; (3) to insure domestic tranquillity; (4) to provide for the common defense; (5) to promote the general welfare; (6) to secure the blessings of liberty to ourselves and our posterity.

Topics.—Approval of nine States needed to make Constitution valid.—Dates of ratification.—Completion of the Revolution.—Character of the government provided for by the Constitution.—Specific purposes declared in the preamble.

References.—Bryce, *American Commonwealth*, i, 25–28; Hinsdale, *American Government*, 106–117; Macy, *Our Government*, 38–41; Miller, *Lectures*, 9–21; Bancroft, *United States*, vi, Book IV.

FOR ADVANCED STUDY

Preparation and Adoption of the Articles of Confederation.—MacDonald, *Select Documents*, 6–15; Curtis, *Constitutional History*, i, 124–141; *American Historical Association*, 1894, 227–236; Fiske, *The Critical Period*, 55–63, 90–94; *American History Leaflets*, 7, 20, 28; *Old South Leaflets*, 2; Hart, *Introduction to Federal Government*, 1–86.

Weakness of the Confederation.—Madison, *Letters*, i, 320–328; *The Federalist*, No. 15, 21, 22; Fiske, *The Critical Period*, 94–105; McMaster, *United States*, i, 130–139; Lodge, *Hamilton*, 36–46; Hart, *Contemporaries*, iii, 120–122, 125–137, 177–182, 195–197.

The Cession of Western Territory by the States Claiming It.—Hinsdale, *Old Northwest*, Chap. XI–XIII; Donaldson, *The Public Domain*, Chap. III; Roosevelt, *The Winning of the West*, iii, 243–251; Fiske, *The Critical Period*, 187–196; King, *Ohio*, 161–173; Hart, *Contemporaries*, iii, 138–142; Madison, *Letters*, i, 136–140.

The Government of the Northwest Territory.—*The Ordinance of* 1787, *Old South Leaflets*, 13; Larned, *Ready Reference;* MacDonald, *Select Documents*, 21–29; Hinsdale, *Old Northwest*, Chap. XV; Cutler, *Manasseh Cutler*, i, Chap. IV–XII; Winsor, *Westward*, Chap. XIV; *North American Review* (Poole), April, 1876; Drake, *Ohio Valley States*, 153–172; Dunn, *Indiana*, Chap. V; King, *Ohio*, Chap. VIII; Hart, *Contemporaries*, iii, 154–158; Donaldson, *The Public Domain*, 149–159.

The Calling of the Constitutional Convention.—Hunt, *Life of James Madison,* Chap. X–XIV; Bancroft, *United States,* vi, 182–203; Fiske, *The Critical Period,* 212–222; McMaster, *United States,* i, 389–399; Gay, *James Madison,* 55–63; Curtis, *Constitutional History,* i, 340–368; Schouler, *United States,* i, 32–39.

The Making of the Draft of the Constitution.—Elliot, *Debates*; Madison, *Letters,* i, 343–355; Washington, *Writings,* xi, 128–156; Bancroft, *United States,* vi, 207–276, 292–367; Curtis, *Constitutional History,* i, 374–488; ii, 3–487; *Federalist*; H. Von Holst, *Constitutional Law,* 16–24; Fiske, *The Critical Period,* 222–305; McMaster, i, 438–453; Hunt, *Life of James Madison,* Chap. XIII, XIV; Gay, *James Madison,* Chap. VII, VIII; Roosevelt, *Morris,* 133–165; Stillé, *Life and Times of John Dickinson,* Chap. VII; Lodge, *Hamilton,* 57–65; Schouler, *United States,* i, 39–51; Hart, *Contemporaries,* iii, Chap. X; *Old South Leaflets,* 70.

The Constitutional Convention of 1787.—Bancroft, *United States,* vi; Curtis, *Constitutional History,* i, 257–697; Hart, *Formation of the Union,* Chap. VI; Walker, *Making of the Nation,* Chap. II; Hildreth, *United States,* iii, Chap. XLVII, XLVIII; Landon, *Constitutional History,* 76–124; American Academy of Political Science, *Annals,* ix, 380; Jameson, *Essays in Constitutional History;* Fisher, *Evolution of the Constitution,* Chap. VI; Story, *Commentaries,* §§ 272–281; Hart, *Contemporaries,* iii, §§ 54–82; Hill, *Liberty Documents,* Chap. XVII; Elliot, *Debates;* Meigs, *Growth of the Constitution;* Stevens, *Sources of the Constitution.*

Different Opinions Respecting the Confederation and the Proposed Government.—Hosmer, *Adams,* 381–392; Roosevelt, *Morris,* 128–132; McMaster, *United States,* i, 356–389; Lodge, *Hamilton,* 50–53; Washington, *Writings,* x, 345, 346; xi, 1–3, 12, 80–82; H. Von Holst, *Constitutional Law,* 13, 14; Madison, *Letters,* i, 169–173, 195–198, 201, 202, 205–208, 229, 230.

Opposition to the Proposed Constitution, and the Struggle to Secure its Adoption.—Elliot, *Debates,* i, 318–338; Bancroft, *United States,* vi, 371–438, 452–462; Curtis, *Constitutional History,* i, 491–604; Fiske, *The Critical Period,* Chap. VII; McMaster, *United States,* i, 454–501; Hunt, *Life of James Madison,* Chap. XV–XVII; Gay, *James Madison,* Chap. IX; Tyler, *Henry,* Chap. XVIII;

Hosmer, *Adams*, 392–401; Lodge, *Hamilton*, 65–80; Schouler, *United States*, i, 60–78; Hart, *Contemporaries*, iii, Chap. XI; Johnston, *American Orations*, i, 24–43; Ford, ed. *Pamphlets*, 1–23, 91–115, 272–275, 277–322; Washington, *Writings*, xi, 183–186; H. von Holst, *Constitutional Law*, 28.

General View of the Formation of Constitutions.— Jameson, *Constitutional Conventions;* Morey, *Genesis of a Written Constitution*, Am. Acad. Pol. Sc., *Annals*, i, 529–557; *American Historical Review*, v, 467–490; Story, *Commentaries*, §§ 272–280, 1826–1831; Hinsdale, *American Government*, Chap. VII–X; Bryce, *American Commonwealth*, i, Chap. XXXI, XXXII.

CHAPTER IV

THE FEDERAL LEGISLATURE

28. Congress.—Congress is composed of two houses, the Senate and the House of Representatives. This is in accordance with the provision of the first section of Article 1 of the Constitution, which affirms that "all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives." The President coöperates with the two houses of Congress in making laws. He is required to express his approval or disapproval of "every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary," except votes on the question of adjournment. An additional exception is that resolutions proposing amendments of the Constitution, passed by both houses of Congress, do not require the assent of the President. Composed of two houses, the Congress has the form generally assumed by the legislatures of modern States.

The bicameral organization of the Legislature is thought to be attended by certain advantages: (1) It prevents hasty, rash, and dangerous legislation by extending the period of deliberation, and by causing bills to be considered from the different points of view of two houses differently constituted. (2) It tends to check attempts to use the authority of the Legislature for personal or private ends. (3) It gives opportunity for a new and independent review

of all projected measures. (4) It allows a bill that has been passed in the heat of passion in one house, to be submitted to the cool judgment of another body. Washington is said to have replied to Jefferson's attack on the system of two houses by saying to Jefferson, as they sat at table, "You yourself have proved the excellence of two houses this very moment." "I?" said Jefferson; "how is that, General?" "You have," replied Washington, "turned your hot tea from the cup into the saucer, to get it cool. It is the same thing we desire of the two houses."

The two houses of Congress are representative bodies. This means that the members are chosen under a system of representation. Under this system the following conditions are observed: (1) The power of the voters is transferred to the representative; (2) the power is transferred for a definite period; (3) the electors or voters must not only give over the power, but they must also select the person to be the representative.

The representative is not required to obey instructions given him by his constituents or to pledge himself to vote in accordance with their demands. The plan to instruct or pledge representatives, if carried out, would remove the decision on questions of legislation from the representative body to the voters; and this would deprive the legislative assembly of its quality as a deliberative body and make it simply a means for registering decisions determined by the great body of the people having the right to vote.

If one were to inquire into the origin of the bicameral system which is illustrated in Congress and in the State legislatures, he would be led back to the early history of our race for the type—to the time when there was a *king* or chief with limited power, a small *council* of nobles or of old men, and a general *assembly* of the whole people. This type has perpetuated itself in the later history of the race. The council survives in the modern House of Lords, or house

of nobles, or Senate; and the assembly survives in the lower house, under whatever name it may appear. In the course of history there have been temporary variations from this type. In Sweden, for a long time, there were four houses that made up the national legislature. These four legislative bodies represented four classes: the nobles, the clergy, the burgesses or the inhabitants of cities, and the peasants or persons living in the country. In England all of these classes existed; but the nobles and the clergy were represented in the House of Lords, and the other two classes were represented in the House of Commons. Under Cromwell, England had for a short time a single house; France began her several republican governments in each case with only one national legislative body. Congress consisted of only one body under the Articles of Confederation. But everywhere there has been a tendency to the bicameral system, realizing the original type. In the persistence of the political instinct of our race is the fundamental ground for the similarities discovered among modern governments, and for the appearance of the bicameral legislature in practically all of them.

Topics.—Form of congressional organization.—Legislative power of the President.—Advantages of bicameral system.—Washington's illustration.—Character of a representative.—Instructing representatives.—The political instinct.

References.—Dawes, *How We Are Governed*, 73; Ford, *American Citizen's Manual*, Part I, 10; Hinsdale, *American Government*, 144–147; Lalor, *Cyclopædia*, i, 587; Freeman, *General Sketch of History*, 6; Crane and Moses, *Politics*, 68–81.

29. The House of Representatives.—The House of Representatives is "composed of members chosen every second year by the people of the several States." The members of this body are said to represent the people; yet in their election the individuality of the States is recognized, since

every congressional district is a subdivision of a State. The electors in each State are required to have the qualifications requisite for electors of the most numerous branch of the State legislature. Members from different States are, therefore, elected under different rules of suffrage. In Rhode Island a property qualification is required. In Massachusetts, Connecticut, and California it is required that the elector shall be able to read the Constitution or other laws. The only limitation on the power of the State to determine who shall be an elector is that contained in the fifteenth amendment of the Constitution, which provides that "the right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State on account of race, color, or previous condition of servitude."

Topics.—Time of election.—Representation of the people.—Qualifications of representatives.—Qualifications of electors.—Fifteenth amendment.

References.—Dawes, *How We Are Governed*, 74; Fiske, *Civil Government*, 220–232; Hinsdale, *American Government*, 147, 148, 151; Lalor, *Cyclopædia*, ii, 474; Macy, *Our Government*, 183.

30. The Number and Apportionment of Representatives.—The number of members of the House of Representatives in the United States at its first meeting was fixed by the Constitution. It was provided that this number should not exceed one for every 30,000 inhabitants; and that, awaiting the first enumeration, which was required to be made "within three years after the first meeting of the Congress," the States might elect sixty-five members, distributed as follows: New Hampshire, three; Massachusetts, eight; Rhode Island, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three. With each successive

census a new ratio of representation has been adopted. The following tabular statement gives the different periods, the census on which the ratio of that period is based, the ratio, and the number of members:

PERIOD.	CENSUS.	RATIO.	NO. OF MEMBERS.
1789–1793	Determined by the Constitution.		65
1793–1803	1790	33,000	105
1803–1813	1800	33,000	141
1813–1823	1810	35,000	181
1823–1833	1820	40,000	212
1833–1843	1830	47,500	240
1843–1853	1840	70,680	223
1853–1863	1850	93,503	234
1863–1873	1860	127,941	241
1873–1883	1870	130,533	292
1883–1893	1880	154,325	332
1893–1903	1890	173,901	356
1903–1913	1900	194,182	386

It is to be observed here that not only has the ratio increased from decade to decade, but the number of members also has greatly increased. The first five apportionments were made according to the population of the States, but no account was taken of the fractional remainders. Under the rule adopted in 1843, each State had as many representatives as the basis of the ratio, 70,680, was contained times in the population of the State, and one representative for the remainder over one-half of this number. Each State, whatever its population, should have at least one representative. But for this provision Delaware, Nebraska, Nevada, and Oregon would have had no representation in the House in 1873, since the population of each of those States was below the number fixed as the basis of the ratio. Any State coming into the Union after the number and apportionment of representatives has been determined shall be represented in accordance with the fixed ratio, but the representatives shall be in addition to the specified number. Numerous later changes have been

made in the method of apportioning the representatives, but the fraction has continued to be considered. With the growth of the nation the representative has come to stand for an increasing body of persons.

While negro slavery lasted in the South, the slaves were counted for three-fifths of their actual number in determining the population of the State for purposes of apportioning representatives. If, for example, a State had a white population of 175,000 and a slave population of 100,000, the State would be awarded a representation on the basis of a population of 175,000 plus three-fifths of 100,000, or 60,000; or in all, a population of 235,000. With a ratio of one representative for each 33,000 of the inhabitants, such a State would send seven representatives to Congress. The constitutional provision in this matter was that "Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons." As the slaves had no vote, this provision gave the white people in the South a larger congressional representation than had the white people in the North. "The arrangement adopted by the Constitution was a matter of compromise and concession, confessedly unequal in its operation, but a necessary sacrifice to that spirit of conciliation which was indispensable to the union of States having great diversity of interests and physical condition and political institutions."

Topics.—Original number of representatives.—Apportionment of these.—Increasing ratio.—Increasing number of members.—Fractional remainders in the several States.—Negro slavery in the system of apportionment.—The constitutional provision establishing this system.

References.—Dawes, *How We Are Governed*, 75–78; Ford, *American Citizen's Manual*, 14, 15; Hart, *Actual Government*, 221–225; Macy, *Our Government*, 180–182; Story, *On the Constitution*, §§ 636–644; Bancroft, *United States*, vi, 264–269.

31. Qualifications of Representatives.—A representative in the United States must have the following qualifications:

1. He must be twenty-five years old. For the lower, or elective, house of the English Parliament it is required simply that the member shall not be a minor.

2. The representative must have been for seven years a citizen of the United States. He may, therefore, be a naturalized foreigner. In England, however, a foreigner, though naturalized, cannot be a member of either house of Parliament.

3. For the representative there is no property qualification and no religious test.

4. The representative, when elected, must be an inhabitant of the State in which he is chosen. Also it is expected that he will live in the district in which he is chosen. But this, like other unwritten laws, is not always followed. The reason for this provision is the thought that a representative who resides in the district will better understand the peculiar wants of his constituents than one living in some other part of the State. Under this system too much stress has sometimes been laid on the character of the representative as a local agent. "Representatives," says Judge Cooley, "are chosen in States and districts; but when chosen they are legislators for the whole country, and are bound in all they do to regard the interest of the whole. Their own immediate constituents have no more right than the rest of the nation to address them through the press, to appeal to them by petition, or to have their local interests considered by them in legislation. They bring with them their knowledge of local wants, sentiments, and opinions,

and may enlighten Congress respecting these, and thereby aid all the members to act wisely in matters which affect the whole country; but the moral obligation to consider the interest of one part of the country as much as that of another, and to legislate with a view to the best interests of all, is obligatory upon every member, and no one can be relieved from this obligation by instructions from any source. Moreover, the special fitness to legislate for all, which is required by the association, mutual information, and comparison of views of a legislative body, cannot be had by the constituency; and the advantages would be lost to legislation if the right of instruction were recognized."[1]

Actually, however, representatives and senators and members of State legislatures are elected with the very definite understanding that they are to work for the interests of their several districts or for the interests of their States; and their success is generally likely to be estimated by their constituents with reference to what they accomplish in this narrower sphere of their proper activity.

Topics.—Qualifications of representatives.—The question of residence.—Functions and obligations of representatives.

References.—Dawes, *How We Are Governed*, 80–82; Hinsdale, *American Government*, 148; Fiske, *Civil Government*, 221; Cooley, *Constitutional Law*, 41, 42.

32. The Method and Period of Election.—It is required by law that representatives shall be elected by districts of contiguous territory equal in number to the number of representatives. This requirement was established by an act of Congress, passed June 25, 1842.[2] This was the first practical step on the part of Congress to control the election of its members. Further legislation to the same end was had in 1871, when by congressional act it was

[1] Cooley, *Constitutional Law*, 41, 42.

[2] See § 33.

provided that all votes for representatives in Congress should be by written or printed ballots. The next year, in 1872, the time for holding the elections was fixed for the Tuesday after the first Monday of November; and this provision was made to apply throughout the Union and to go into effect in 1876. But before this date—namely, in 1875—States that had through their constitutions established a different date for voting for representatives in Congress were exempted from the operation of this law; and in 1899 the use of the voting machine was made lawful, as well as the use of written or printed ballots. This action was taken under the constitutional provision which prescribed that "the times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators."[1] The exception concerning the places of choosing senators was inserted because it was not thought desirable that the Congress should have the right to determine where the State legislatures should meet.

The representatives are elected for two years. Although elected in November, they do not meet until December of the following year, unless summoned to an extra session. This arrangement gives the newly elected representative opportunity and incentive to become familiar with the details of procedure in the House and with the methods of acquiring in the executive departments and elsewhere, the special information which he will need from time to time in his legislative work. On the other hand, if he is elected as the champion of an idea or policy, in which his constituents are especially interested, he will have no opportunity for a year after his election to advocate that policy; and in the meantime the people thus interested are powerless to in-

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[1] See § 37.

tervene by legislation in matters that vitally concern them. But it may, perhaps, still be urged that any cause or policy that is not of sufficient importance to keep itself alive for more than a year is likely to partake of the nature of a popular whim, and ought not to be represented in permanent legislation. The government is not formed to give immediate expression to gusts of popular passion, but to embody in laws, and carry out executively, the mature and abiding wishes of the nation.

Only eleven extra sessions were held in the first one hundred and fifteen years under the Constitution. As the representative's term is only half as long as that for which the President is elected, the people have an opportunity to indicate their views on important phases of the President's policy in the middle of his administration. "When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies."[1] The governor of the State has no power to fill such vacancy by appointment. Formerly, in some of the States, a majority of all the votes cast was necessary for an election; but since 1894 only a plurality has been required in all States. The short term of two years for which representatives are elected, and the failure of many of them to secure reëlection more than once or twice, renders the House less effective than it would be if the members generally served for longer periods; for by longer service they would become familiar with the necessary methods of legislation, and thus more useful both to their constituents and to the nation as a whole.

Topics.—Congressional districts.—Steps toward control of elections by Congress.—Constitutional authority for this action.—Period between election and meeting of representatives.—Advantages and disadvantages of short term.—Vacancies in the House.

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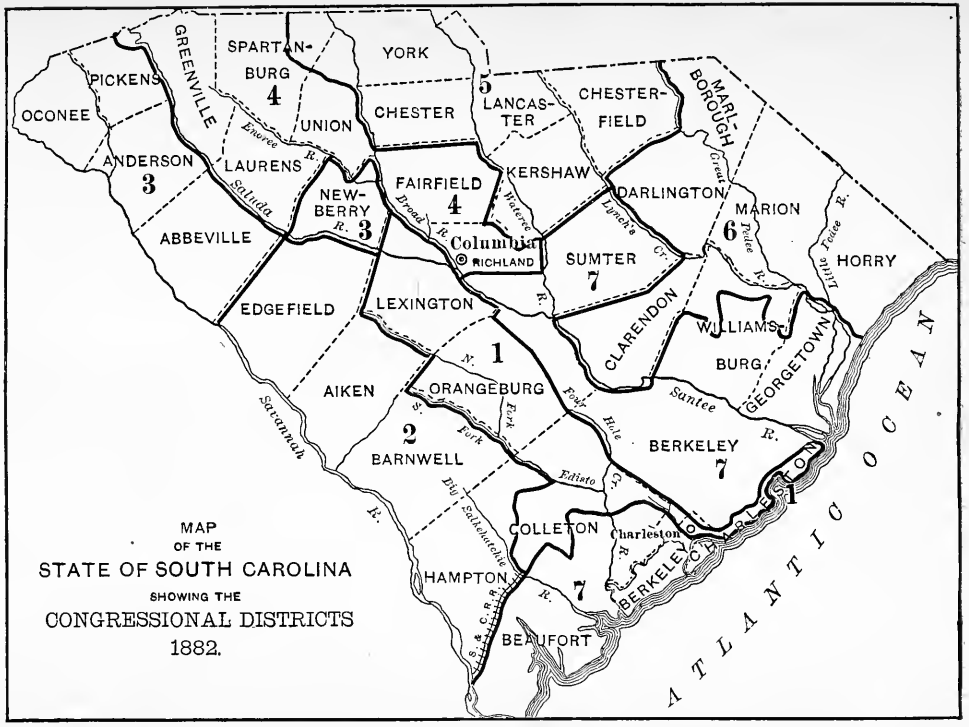
[1] Constitution, Art. I, § 2.

References.—Bryce, *American Commonwealth*, i, 121–137; Dawes, *How We Are Governed*, 78; Ford, *American Citizen's Manual*, Part I, 15–17; Hinsdale, *American Government*, 155–159, 164–166.

33. **Gerrymander.**—Before 1842 the representatives from any State might be elected by a general ticket of the whole State, the voters in all parts of the State voting for the whole list of persons to be elected. Since that date the several representatives have been elected from congressional districts. There is a conspicuous exception to this rule. After a new census it becomes necessary to make a new apportionment of the representation. If a State under a new apportionment act is allotted an increase in the number of its representatives, and the congressional election occurs before the new districts have been formed, the additional member or members are chosen by voters from all parts of the State. They are elected on what is known as a general ticket. They are called "congressmen at large." It is sometimes said that election by general ticket is likely to secure a better class of officers than election in small districts. The ground of this opinion is found in the fact that in order to attract the approving attention of a whole State or of a very large district, stronger qualities are required than would be needed to bring one prominently before the inhabitants of a small district. On the other hand, in a very large district the individual voter can know only imperfectly the candidate for whom or against whom he is expected to vote. He is obliged to regard the nomination by his party convention as a guarantee that the candidate is worthy of his support. This arrangement, however, throws upon the party committee, or party managers, a greater power than it was originally intended any such persons should exercise.

When members of the House of Representatives are elected, each in his individual district, the party in power



MAP
OF THE
STATE OF SOUTH CAROLINA
SHOWING THE
CONGRESSIONAL DISTRICTS
1882.

in a State, on redistricting the State, is moved to lay out the districts in such a way as to insure for itself the election of the largest possible number of congressmen. The method that has sometimes been employed to reach this end is to draw the lines of district boundaries in such a way as to make majorities for the party in charge of redistricting in as many districts as possible, but to make these majorities as small as may be safely done, and to make majorities for the opposing party in as few districts as possible, but to make them as large as possible. This arrangement has caused the party in power to waste the fewest votes possible, and the opposite party the most possible; for all votes given in any district over the number necessary to make a safe majority are thrown away. If the region where these surplus voters mainly reside can be added to another district, where they are needed to make a majority, another representative is gained for the party interested in making the change. In attempting to accomplish this purpose districts have sometimes been made very irregular in shape, as may be seen by a glance at the outlines of the congressional districts of South Carolina. The light, broken lines represent the boundaries of counties; the heavy, solid lines, the boundaries of the congressional districts.

The trick was invented in Virginia, and was there applied for the purpose of preventing the election of James Madison to the first Congress. It was later introduced into Massachusetts. Under Governor Gerry it was applied to secure the largest possible number of State senators for the party to which he belonged. A number of towns that were brought together into one district made a strange figure, which, through a combination of part of the word salamander with the name of Gerry, was designated "Gerrymander." The terms *gerrymander* and *gerrymandering* have remained in the language of American politics; and, unfortunately, the practice designated also has remained.

Topics.—Election by general ticket.—Aim of party in power in redistricting the State.—Methods sometimes employed to accomplish its purpose.—Origin and name of *gerrymandering*.

References.—Bryce, *American Commonwealth*, i, 121, note; Fiske, *Civil Government*, 224; Hart, *Actual Government*, 222; Hinsdale, *American Government*, 166; Lalor, *Cyclopædia*, ii, 367.

34. The Senate.—The Congress under the Articles of Confederation consisted of only one house. In this body a certain equality among the States was maintained, since each State, whatever the number of its delegates to the Congress, had one vote. Now each State has two votes in the Senate. It may therefore be divided against itself, giving its two votes on opposite sides of a given question. This equal representation of the States is fixed by the Constitution, which declares that "no State, without its consent, shall be deprived of its equal suffrage in the Senate."

The special purposes for which the Senate exists have been set forth as follows:

"To conciliate the spirit of independence in the several States, by giving each State, however small, equal representation with every other, however large, in one branch of the national Government.

"To create a council qualified, by its moderate size and the experience of its members, to advise and check the President in the exercise of his powers of appointing to office and concluding treaties.

"To restrain the impetuosity and fickleness of the popular house, and so guard against the effects of gusts of passion or sudden changes of opinion in the people.

"To provide a body of men whose greater experience, longer term of membership, and comparative independence of popular election would make them an element of stability in the government of the nation, enabling it to maintain its

character in the eyes of foreign states, and to preserve a continuity of policy at home and abroad.

"To establish a court proper for the trial of impeachments, a remedy deemed necessary to prevent abuse of power by the executive."

Topics.—Differences between the Congress under the Articles of Confederation and under the Constitution.—Purposes of the Senate.

References.—Bryce, *American Commonwealth*, i, 108; Wilson, *Congressional Government*, Chap. IV; Willoughby, *Rights and Duties of American Citizenship*, 166, 167.

35. The Number, Classification, and Terms of Senators.—The senatorial term is six years. In order that the Senate might be a permanent body, it was provided that the first senators elected should be divided as equally as might be into three classes. In the words of the Constitution, "the seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies." But after the legislature has had an opportunity to elect a senator and failed to do it, the governor cannot fill the vacancy by appointment. If an appointment were made under these circumstances, the Senate would refuse to admit the person appointed. In making the classes originally, no two senators from one State were put into the same class; and the term for which each class should serve was determined by lot. Senators from new States are assigned to one or another of these classes; consequently, the first senators from new States serve unequal periods. One may fall into

the class of senators just elected, and have nearly or quite the full term; the other may be put into the class with those whose terms are about to expire, and thus have only a very brief period of service.

Topics.—Provision for making the Senate a permanent body.—Filling vacancies.—Senators from new States.

References.—Bryce, *American Commonwealth*, i, 92–120; Dawes, *How We Are Governed*, 82–84; Fiske, *Civil Government*, 223; Hart, *Actual Government*, 217.

36. Qualifications of Senators.—To be a senator one must have the following qualifications: (1) He must be thirty years old; (2) he must have been a citizen nine years; (3) he must be an inhabitant of the State from which he is chosen. It was designed originally that the Senate should be composed of men of superior ability and large experience in legislative and administrative affairs. In more recent years many very rich men, without knowledge or instructive political experience have asked to be elected senators, and their requests in some cases have been granted.[1]

Topics.—Qualifications of senators.—Original design respecting senators.—Is wealth also a qualification?

References.—Dawes, *How We Are Governed*, 88; Fiske, *Civil Government*, 223; Hart, *Actual Government*, 220; Hinsdale, *American Government*, 162.

37. Method of Election.—Respecting the election of senators, the Constitution provides simply that they shall

[1] "The election of the senators by the State legislatures has given rich nonentities exceptional facilities for obtaining seats in the Senate, if not by direct corruption, at all events through the party organization which they get hold of by their liberal contributions to the party. The electors of a whole State cannot be bought, of course; but if the organization adopts these millionaires as regular candidates for the popular election, will not the final result be the same?"—Ostrogorski, *Democracy and the Organization of Political Parties*, ii, 537.

be chosen by the legislature of the State. The manner of electing was for some time determined by the State itself. Under this freedom about half of the States elected senators by a concurrent vote of both houses, and the other States required the senators to be voted for in an assembly composed of the two houses. On July 25, 1866, Congress, by a statute, prescribed a method to be observed in all the States. Under this law the "election shall be conducted in the following manner: Each house shall openly, by a *viva voce* vote of each member present, name one person for senator in Congress from such State, and the name of the person so voted for, who received a majority of the whole number of votes cast in each house, shall be entered on the journal of that house by the clerk or secretary thereof; and if either house fails to give such majority to any person on that day, the fact shall be entered on the journal. At twelve o'clock, meridian, on the day following that on which proceedings are required to take place as aforesaid, the members of the two houses shall convene in joint assembly, and the journal of each house shall then be read; and if the same person has received a majority of all the votes in each house, he shall be declared duly elected senator. But if the same person has not received a majority of the votes in each house, or if either house has failed to take proceedings as required by this section, the joint assembly shall then proceed to choose, by a *viva voce* vote of each member present, a person for senator; and the person who receives a majority of all the votes of the joint assembly, a majority of all the members elected to both houses being present and voting, shall be declared duly elected. If no person receives such a majority on the first day, the joint assembly shall meet at twelve o'clock, meridian, of each succeeding day during the session of the legislature, and shall take at least one vote, until a senator is elected." This process by which an elective

body, like a legislature, chooses an officer, as in the case of electing a senator, is called an indirect election. It is distinguished from a direct election, for in a direct election the voters vote immediately for the person they wish to choose. This method of choosing the senators has called forth favorable opinions from foreign critics; but the voters of the United States have not been constantly of one mind concerning its merit. There were provided, through the Constitution, only two important occasions for resorting to indirect election: one, in the election of the President; another, in the election of senators. In this respect the United States stands in strong contrast with some of the Spanish-American republics, where indirect election is more extensively used. The original method of electing the President has been dropped, and several attempts have been made to cause the senators to be chosen by the direct vote of the people. These attempts have taken the form of proposals to amend the Constitution of the United States. The proposal is "that so much of Section 3, Article 1, of the Constitution of the United States as provides that the senators of the United States shall be chosen by the legislatures thereof, shall be amended so that the same shall read as follows: 'The Senate of the United States shall be composed of two senators from each State, to be chosen by the vote of the qualified electors in said States respectively, and at such time as shall be determined by act of Congress.'" Propositions like this have been much discussed and vigorously urged in the last few years.

The plan to have United States senators elected directly by the whole body of voters is supported especially by two classes of persons: (1) Those who believe that progress toward good government consists in bringing all governmental affairs as fully into the hands of the people as possible; (2) those who believe that the election of senators by the legislature offers facilities for corruption that would

not be presented by a direct election, and that to make the change proposed would render this phase of political life purer. A step away from free indirect election is sometimes taken by having each State convention announce the candidate of the party. This was done by the Republican Convention of Illinois, in 1858, when it was announced that if the next legislature should have a majority of Republicans, Abraham Lincoln would be elected senator. A similar announcement was made by the Democrats in favor of Stephen A. Douglas.

Topics.—Election of senators.—Method prescribed by Congress, July 25, 1866.—Direct and indirect elections.—Indirect election in the United States.

References.—Hinsdale, *American Government*, 160; Lalor, *Cyclopædia*, iii, 702; Wilson, *Congressional Government*, 193–241; *Revised Statutes of the United States*, § 15.

38. Meetings of Congress.—The time for the meeting of Congress is fixed by the Constitution in the provision that "the Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day." Under this provision each Congress holds two regular sessions. The two regular sessions may be known as the long and the short sessions. The former begins on the first Monday in December, and continues into the following summer. The latter, beginning on the first Monday in December of the year in which the first session closes, ends at noon on the fourth of March. Prior to 1853 this session ended at midnight, March 3; and at the present time all business transacted between that time and noon of the following day is recorded as of the third of March. Under an act of January 22, 1867, requiring each new Congress to meet "at twelve o'clock, meridian, on the fourth day of March, the day on which the term begins for which Congress is elected,"

each Congress held three sessions. The first session began March 4; the second, on the first Monday in December; and the third, on the first Monday in December of the following year. This law was later repealed. The forty-second Congress, which ended March 3, 1873, was the last whose meetings were determined by it. In this connection the distinction between a congress and a session should be kept in mind. A congress, as the forty-seventh, is the whole body of representatives and senators taken for the period of two years for which the representatives are elected. The session is the series of meetings extending from the first Monday in December to the time of adjournment in the following spring or summer. A new Congress is elected every two years. Its regular sessions begin on the first Monday in December of each year. It may be convened in extra session by the President.

An adjournment of Congress is had on motion. But "neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting." A motion to adjourn takes precedence of all other motions and cannot be amended or debated.

Either the Senate or the House of Representatives may be convened separately. But, practically, there appears to be no reason for calling the House without the Senate. On the other hand, for considering treaties and for confirming appointments to office, there may be need of calling a meeting of the Senate without the House.

Congress has met in three cities: from 1789 to 1791, in New York; from 1791 to 1800, in Philadelphia; since 1800, in Washington. The building in which the two houses meet at present is called the Capitol, the Senate occupying the north wing, and the House the south wing.

The houses of Congress determine at what hour of the day the meetings shall begin. They adjourn whenever they

see fit. Ordinarily they meet at noon, and the meeting usually lasts four or five hours. The houses also determine on what days meetings shall be held. Sometimes meetings are held in the evening, and on rare occasions the meetings are continued all night. The all-night meetings have not been found favorable for the transaction of important business. The ordinary meetings are public; but an "executive session," that is to say, a secret session, is held whenever the majority of the house by vote expresses a desire for such a meeting. Ordinarily, when questions of general interest are before Congress, the business of the houses is carried on in the presence of a large number of visitors.

Topics.—Time for the meeting of Congress.—Law of 1867.—A congress and a session.—Method of convening Congress.—Adjournment.—Reason for convening one house without the other.—Where Congress has met.—"Executive session."

References.—Bryce, *American Commonwealth*, Chap. XIX; Dawes, *How We Are Governed*, 89–93; Fiske, *Civil Government*, 226; Hart, *Actual Government*, 226, 237–239; Hinsdale, *American Government*, 168; Macy, *Our Government*, 183.

39. Contested Elections.—When a person is elected to be a member of the House of Representatives or of the Senate, the governor of his State issues to him a certificate of election, which is evidence that he is entitled to a seat in the house named in the certificate. The evidence is, however, not conclusive, for the Constitution provides that "each house shall be the judge of the elections, returns, and qualifications of its own members"; and in acting under this provision each house maintains a committee on elections, and to this committee all contested cases are referred. Having considered these cases and taken such additional evidence as may be had or may be desired concerning them, the committee makes a report to the house, and the house then by vote renders its decision; and from

this decision there is no appeal. In a contest of this kind, Congress makes a certain allowance to the constituents to cover the expenses of the case; and each contestant is likely to receive the full support of the party to which he belongs.

The power to render a final decision on the election of its members is exercised almost universally by legislative bodies. When the English Parliament was struggling to free itself from royal control, the possession of this power was necessary to success. Without it the king might have filled the House of Commons with his partisans, and thus kept Parliament dependent on his will. Like the control of the purse, it furnished a point of advantage, which was seized and used to establish parliamentary independence. The examination and settlement of questions concerning the election of its members having become a recognized feature of English parliamentary procedure, it was copied by other legislative bodies, as many other points of English parliamentary law were copied. It was copied, moreover, in many places where the circumstances of its origin did not exist. This was true of the United States. There was no reason here to suppose that, without the power to decide cases of disputed elections, any other department would curtail the constitutional independence of the legislature. The question to be decided is a question of evidence, demanding a judicial investigation and decision; and there appears to be no other institution as well fitted to render such a decision as a court of law. At present all cases of contested elections for the House of Commons are tried by the common-law judges. This reform was made in 1867.

Topics.—Certificate of election.—Method of house's action on the evidence that a person has been elected.—Reason for this power in House of Commons.—Reason for its appearance in the United States.—Change in England.

References.—Dawes, *How We Are Governed*, 86; Ford, *American Citizen's Manual*, 19; Hart, *Actual Government*, 220; Hinsdale, *American Government*, 176; Miller, *Lectures*, 193.

40. Members of Congress.—Members are persons who hold certificates of election from the proper authorities of their respective States, whose right to seats in one house or the other is acknowledged by the house itself, and who have taken the prescribed oath of office. The attendance of members is presumed. The Constitution authorizes less than a quorum to compel absentees to attend. Absence of any member without leave is prohibited by the rules of the house to which he belongs. The members are exempt from arrest during their attendance at sessions and in their going to and returning from them, except when they are charged with treason, felony, or breach of the peace. The reason of this exemption is found not in a desire to extend special favors to members of Congress, but in a design to prevent interference with the work of the national Legislature. But for this privilege, members, in case of closely contested questions, might be arrested on false and absurd charges, and temporarily withheld from performing their proper legislative functions, if certain persons were interested in keeping them from voting.

The territorial delegates are persons elected to Congress by a territory. They are sometimes elected by the territorial legislature and sometimes by the people. They have seats in the House of Representatives and may take part in the discussion of all matters relating to their territory, but they may not vote.

Topics.—Description of members.—Attendance.—Exemption from arrest.—Purpose of this exemption.—Territorial delegates.

References.—Dawes, *How We Are Governed*, 96, 97; Ford, *American Citizen's Manual*, 20, 21; Hart, *Actual Government*, 227–231; Hinsdale, *American Government*, 184, 185.

41. Quorum.—A quorum is the number of members of a legislature or a deliberative body that is necessary for the legal transaction of business. In a popular government it is important that the quorum of a legislative body should be large, in order that no measure may be lawfully approved or rejected without the knowledge and coöperation of the bulk of the members. With respect to this matter Congress shows a wide departure from the law of the English Parliament. The House of Commons with a membership of 670, has a quorum of forty; and the House of Lords, with almost as many members, has a quorum of three. The quorum of each house of Congress was fixed by the Constitution in the provision that "a majority of each shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such manner and under such penalties as each house may provide." A similar rule applied to the meetings of the Congress under the Articles of Confederation, except that the Continental Congress could not compel the attendance of absent members. In fact, a State might recall her delegates and thus prevent the transaction of business. A majority quorum is also required in the State legislatures.

The rule relating to the number of the quorum having been established, it became important to determine what members should be counted for this purpose. Formerly, a member refraining from voting on a question, although present, was considered as not forming a part of the necessary quorum for that occasion. Under this rule the members of the opposition might refuse to vote, and thus prevent action, unless the dominant party was able to assemble of its members a number at least equal to a majority of all the members of the house. A member might take part in the debate and then refuse to vote, and by this refusal become constructively absent although actually present.

Whenever the dominant party had only a small majority, the minority in this way might carry on a very effective course of filibustering and delay legislative action. In the fifty-first Congress the speaker of the House of Representatives departed from custom and counted for a quorum all members actually present whether they had voted on the pending question or not. Laws passed under this interpretation of the quorum have been found by the Supreme Court to be valid, and the practice thus instituted is likely to become a permanent feature of congressional procedure.

Topics.—Definition of *quorum.*—Importance of large quorum.—Quorum in Congress compared with that of English Parliament.—Members to be counted in quorum.

References.—Dawes, *How We Are Governed,* 137; Hinsdale, *American Government,* 177.

42. **Compensation of Members.**—The policy of not paying the members of the national legislature, which at present prevails in England, makes it impossible for a poor man, however marked his ability as a legislator, to hold the position of a member, unless some person or persons can be found who may be willing to undertake to pay him a salary or to meet his expenses during the term of his service. This policy was considered inconsistent with the fundamental ideas of the Government of the United States. There were also grave objections to having the members paid by the constituents, as the members of the House of Commons were paid prior to 1660. The project to leave the payment of members of Congress to the States from which they were elected also failed to receive the approval of the Constitutional Convention. It was feared that if the members were left dependent on the States for their compensation, it would be impossible to establish a stable government. It was therefore determined that the members of Congress—the senators as well as the representatives—should be paid,

and that the payment should be made from the funds of the Federal Government, the amount to be fixed by statute. The amounts actually established by law have varied from time to time. At first the members of Congress were paid $6 a day, with $6 for every twenty miles of travel. Besides his pay as a member, the speaker received an additional $6 a day. The following tabular statement shows the compensation the members of Congress have received in different periods:

(1) 26 years, 1789 to 1815, $6 a day.
(2) 2 years, 1815 to 1817, $1,500 a year.
(3) 38 years, 1817 to 1855, $8 a day.
(4) 10 years, 1855 to 1865, $3,000 a year.
(5) 6 years, 1865 to 1871, $5,000 a year.
(6) 3 years, 1871 to 1874, $7,500 a year.
(7) 29 years, 1874 to 1907, $5,000 a year.
(8) 8 years, 1907 to ——, $7,500 a year.

The speaker of the House and the president of the Senate receive each $12,000 a year.

In addition to the compensation of $7,500 a year each member receives, at present, mileage at the rate of twenty cents a mile, a certain sum for clerk hire, and also an allowance for stationery and other articles necessary in the performance of his legislative duties.

The allowance known as mileage is made by law to members of Congress for their journeys to and from Washington. Constructive mileage was an allowance for journeys which were merely supposed to be made when Congress adjourned or an extra session was called. Mileage is supposed to be calculated on the basis of the shortest mail route from the residence of the member of Congress to Washington. Members of Congress have, however, rendered accounts for mileage for journeys to Washington reckoned by some other than the shortest mail route. In 1848, Horace Greeley published a statement showing the distances the members would have traveled by the shortest mail route and the distances for which mileage was actually paid.

The excess of distance was more than 183,000 miles, and the excess in payment for the thirtieth Congress was over $73,000. In 1865 the rate of mileage was reduced from forty to twenty cents a mile. It is now granted for one round trip each session.

Topics.—Policy of requiring members of the national legislature to serve without pay.—Payment by constituents.—Project of payment by States.—Plan to pay from funds of Federal Government adopted.—Different rates of payment at different times.—Total compensation.

References.—Dawes, *How We Are Governed,* 97; Fiske, *Civil Government,* 227; Hart, *Actual Government,* 228; Hinsdale, *American Government,* 182.

43. Members of Congress and Offices.—It was a part of the general plan of the founders of the Government to have the offices as widely distributed as possible. They aimed to have the legislative, executive, and judicial functions performed by different persons. The few cases in which this design is not carried out, as instanced by the legislative functions of the chief executive and by the administrative functions of the Senate, are exceptional. In carrying out their purpose with respect to the members of Congress, the makers of the Constitution provided that "no senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office." This makes it impossible for Congress to create offices for its members. The reference in the second part of the provision is to "holding any office under the United States." It does not appear to prevent a member of Congress from holding a State office, although a union of

Federal and State offices in one person is clearly opposed to the spirit of the Government. It prevents a member of Congress from holding a seat in the President's Cabinet. This prohibition has called forth abundant comment, and has led to the suggestion that such constitutional changes should be made as would enable Cabinet officers to be members of Congress. It has been urged that in this respect the United States should imitate England, where the members of the Cabinet, or ministry, are at the same time members of Parliament. But the changes in governmental procedure that would appear in carrying out such a measure have prevented a very wide advocacy of it. At present the members of the Cabinet and the President have charge of executive affairs, but they have no power to introduce bills directly. When, however, they wish a particular matter presented to Congress in the form of a bill, they are not likely to have any difficulty in finding a member of one house or the other who is willing to introduce the bill desired. Under the English system the ministry has charge of the executive business and also leads the majority in Parliament in legislation; it brings in all important bills, controls the order in which bills shall be brought up for discussion and passage, and determines what action shall be taken on amendments made in the Parliament. If any important bill urged by the ministry is opposed by the majority of the Parliament, the ministry is expected to resign; for it must be supported by the parliamentary majority. Under the American system the President is elected for four years, and the members of his Cabinet hold office during his pleasure; and the votes of Congress have no influence on their tenure of office. In France the parliamentary responsibility of the ministry with an elected president has contributed to frequent changes of the ministry and a limitation of the power of the president of the republic.

Topics.—Distribution of offices.—Position of members of Congress with respect to office under the United States.—The Cabinet and Congress.

References.—Dawes, *How We Are Governed*, 99, 100; Hart, *Actual Government*, 243, 244.

44. The Speaker of the House and the President of the Senate.—The Vice-President of the United States is the presiding officer of the Senate. The Senate chooses a president *pro tempore* to act in the absence of the Vice-President, or when that officer "shall exercise the office of President of the United States." The speaker or presiding officer of the Senate may call any member to preside in his place. The member thus called acts for one day only, or for a shorter period. Neither the Vice-President nor the president *pro tempore* exercises much power. The Vice-President presiding votes when there is a tie, and decides the question. The president *pro tempore* votes as a member of the Senate; but, in case of a tie, while he is presiding and after he has voted, he has no power to decide the question by a casting vote, and the measure is lost. Neither appoints committees nor exerts any special influence on the conduct of the Senate's affairs.

The office of Speaker of the House of Representatives, on the contrary, before the recent change, was a position of great power. Elected by the members from their own number in accordance with the constitutional provision that "the House of Representatives shall choose their speaker and other officers," the speaker found one of the sources of his great power in his privilege of appointing the standing committees of the House. This privilege was conferred by the House under a rule passed on the first of January, 1790, and readopted by subsequent Congresses. According to this rule, "all committees shall be appointed by the speaker unless otherwise specially directed by the House." In appointing these committees the speaker

decided who should be the chairman of each; he also provided that the chairman and a majority of each committee should be of the party to which he belonged. In this way he practically determined the action of the House and the course of congressional legislation; for no measure could come before Congress to be voted on that was not brought up by a report of a committee. Another source of the speaker's power was his right to control the proceedings of the House to such an extent that no member could introduce a motion, report a bill, or make a speech unless recognized by the speaker. He usually knew beforehand what members wished to be recognized; for they had conferred with him, and he had a list of their names before him during the meeting.

This "despotism of the speaker" finally led to a revolt, and the House, by a resolution adopted March 19, 1910, provided that there should be a committee on rules, elected by the House, consisting of ten members, six of whom should be members of the majority party and four of whom should be members of the minority party. Under this resolution the speaker could not be a member of this committee, and the committee was required to elect its own chairman from its own members. This made it possible for the House through its committee on rules to determine all those matters which had given the speaker his great power.

The speaker is a member of the House of Representatives, but the "other officers" are not members. They are a clerk, a sergeant-at-arms, a doorkeeper, a postmaster, and a chaplain.

Topics.—Presiding officer of the Senate.—President *pro tempore*.—Member called to preside.—Case of a tie.—The speaker.—Election.—Speaker's power.

References.—Dawes, *How We Are Governed*, 120–145; Fiske, *Civil Government*, 228; Ford, *American Citizen's Manual*, 14, 18; Hart, *Practical Essays*, 1–20; Hart, *Actual Government*, 231–233; *Congressional Record*, March, 1910.

45. Congressional Committees and Legislation.—In some of the cantons of Switzerland, as well as in some of the towns of New England, all of the voters come together to make laws for the canton or town. It would evidently be impossible for all the voters of a State like New York, or for all the voters of the United States, to assemble. Hence, a few are selected as members of the State legislature, or as members of Congress, to act for the whole. In the same way there are many things which a large body, like the Senate or the House of Representatives, has to do that can be more advantageously done by a small number of members than by the entire assembly. For this reason each house of Congress has a number of committees among which are distributed certain parts of the work necessary in connection with legislation. In the Senate the committees are elected by ballot. This involves a somewhat elaborate process. Each party in the Senate has its own organization. The members of each party sometimes hold meetings by themselves, in which they determine what position they will assume with respect to measures before the Senate. These meetings are called party caucuses. The party chief appoints certain party or caucus committees. One of these is called the Committee on Committees. The main business of this committee is to nominate persons for membership in the various regular committees of the Senate. When the two party "slates" are made up—that is, when each of the party committees on committees has arranged the lists of the candidates for the several Senate committees—the lists are brought before the Senate and voted on, the party having a majority in the Senate naturally electing the committees proposed by its party Committee on Committees. The Republican Committee on Committees has varied in number of members during the last fifty years from three to nine; while the Democratic Committee on Committees for many years has consisted of nine members. The list of Senate standing

committees given in the footnote indicates the large number of subjects constantly claiming the attention of the Senate.[1]

It is found by experience that both the majority and the minority in the Senate, as well as in the Congress as a whole, need leaders in order to deal effectually with the multitude of affairs that demand consideration. Each party, therefore, recognizes a small number of its older and abler members as a so-called "steering committee." These members watch the course of legislative events, call caucuses, decide what measures to bring forward for action and what measures to pass over, and, in general, direct the forces of their party.

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[1] In the Senate there are the following committees: Agriculture and Forestry; Appropriations; to Audit and Control the Contingent Expenses of the Senate; the Census; Civil Service and Retrenchment; Claims; Coast and Insular Survey; Coast Defenses; Commerce; Conservation of National Resources; Corporations Organized in the District of Columbia; Disposition of Useless Papers in the Executive Departments; the District of Columbia; Education and Labor; Engrossed Bills; Enrolled Bills; Examination of Civil Service; Expenditures of the Executive Departments; Finance; Fisheries; Five Civilized Tribes of Indians; Foreign Relations; Forest Reservations and the Protection of Game; the Geological Survey; Immigration; Indian Affairs; Indian Depredations; Industrial Expositions; Interoceanic Canals; Interstate Commerce; Investigate Trespassers upon Indian Lands; Irrigation and Reclamation of Arid Lands; the Judiciary; Library; Manufactures; Military Affairs; Mines and Mining; Mississippi River and its Tributaries; Naval Affairs; Pacific Islands and Porto Rico; Pacific Railroads; Patents; Pensions; the Philippines; Post Offices and Post Roads; Printing; Private Land Claims; Privileges and Elections; Public Buildings and Grounds; Public Expenditures; Public Health and National Quarantine; Public Lands; Railroads; Relations with Canada; Relations with Cuba; the Revision of the Laws of the United States; Revolutionary Claims; Rules; Standards, Weights, and Measures; Territories; Transportation Routes to the Seaboard; Transportation and Sale of Meat Products; University of the United States; Woman Suffrage.

Besides these standing committees the Senate creates select committees for special purposes.

In the House of Representatives the standing committees of that body are appointed by the speaker. This is the speaker's most difficult and most important task at the beginning of each Congress. There are the ambitions of 381 members to be satisfied, and it is safe to say that this task is never successfully accomplished. The older members are usually allowed to continue on the committees where they have served. It is expected that the chairmen of all of the House committees will be members of the dominant party, but that the committees will embrace members from both parties. The standing committees of the House of Representatives in the sixty-first Congress numbered fifty-six, besides the joint standing committees.[1]

[1] The following is a list of the standing committees of the House of Representatives of the sixty-first Congress: Accounts; Agriculture; Alcoholic Liquor Traffic; Appropriations; Banking and Currency; the Census; Claims; Coinage, Weights, and Measures; District of Columbia; Education; Election of President, Vice-President, and Representatives in Congress; Elections; Expenditures in the Department of Agriculture; Expenditures in the Department of Justice; Expenditures in the Interior Department; Expenditures in the Navy Department; Expenditures in the Post-Office Department; Expenditures in the State Department; Expenditures in the Treasury Department; Expenditures in the War Department; Expenditures on Public Buildings; Foreign Affairs; Immigration and Naturalization; Indian Affairs; Industrial Arts and Expositions; Insular Affairs; Interstate and Foreign Commerce; Invalid Pensions; Irrigation of Arid Lands; Judiciary; Labor; Levees and Improvements of the Mississippi River; Manufactures; Merchant Marine and Fisheries; Mileage; Military Affairs; the Militia; Mines and Mining; Naval Affairs; Pacific Railroads; Patents; Pensions; Post Office and Post Roads; Private Land Claims; Public Buildings and Grounds; Public Lands; Railways and Canals; Reform in the Civil Service; Revision of the Laws; Rivers and Harbors; Rules; Territories; Ventilation and Acoustics; War Claims; Ways and Means. Also the following joint standing committees, viz.: Disposition of Useless Executive Papers; on Enrolled Bills; on the Library; on Printing.

In the first years of Congress the Senate was largely engaged in executive business. In the field of legislation, measures concerning the national debt, plans of taxation, and expenditures were especially important; and it was recognized that the initiative in these matters belonged to the House of Representatives. The House was therefore obliged to appoint committees very early. In 1802 there were five, and the number was afterward increased as the amount and variety of the business grew. In the Senate there were no standing committees until 1816, and usually the committees of the Senate have been less numerous than those of the House.

The chairman of each committee is the first person named in the official list of the members published at the time of their appointment. He has a secretary, who is paid by Congress; and the committee has a room provided for its meetings. These meetings are nominally secret, but the public is usually informed of all important conclusions reached from day to day. The real purpose of the congressional committees is to facilitate the examination of the bills referred to them. They make it possible for Congress to do thoroughly what, without the committees, it would not be able to do at all.

"The committee of the whole" is the term applied to all the members of a legislative assembly sitting without the restraint of the rules which usually govern that body. When the House of Representatives goes into a committee of the whole, the speaker calls some other member to the chair. The members then enjoy a freedom in debate not permitted in the assembly organized as the House. When the committee of the whole has finished its discussion of the subject intrusted to it, the speaker resumes the chair, and the chairman of the committee of the whole reports to the House; and this report may be treated in the same manner as the report of any other committee. In com-

mittee of the whole, the debate is carried on without reference to the rules of the House; a member may speak on any question under consideration as often as he can get the floor; the previous question cannot be moved, and motions cannot be laid on the table. All important public bills before the House, relating to trade, revenue, or the grant of public money, are considered in committee of the whole.

The rule of the Senate respecting this matter is that "all bills and joint resolutions which shall have received two readings shall first be considered by the Senate *as in committee of the whole*, after which they shall be reported to the Senate; and any amendments made *in committee of the whole* shall again be considered by the Senate, after which further amendments may be proposed."

The most powerful committee of the House is the Committee on Rules. This is a committee of five members: the speaker of the House, two other members of the dominant party, and two of the minority. The speaker and the two other members of his party constituting a majority, are able to make decisions for the committee. The great power of the committee is derived from the fact that it arranges the order in which business may be done in the House; that it practically determines when any committee may be allowed to report on a bill that has been assigned to it, and that it fixes the time when a report on a bill may be discussed, and the amount of time that may be given to its discussion. It may thus advance a bill that appears to it important, and hold back a bill that seems to be less urgent.

The history of the passage of a bill through its various stages till it becomes a law illustrates the services rendered by the committees in the business of legislation. A bill is a proposition for legislation in the form of a law. It is drawn either by a member of the House or by some other person, and placed in the hands of a member to be intro-

duced. In the broadest sense, a bill is any legislative proposition that can come before Congress. In this sense a joint resolution is a bill. Private bills include bills for the relief of private persons, pension bills, and bills removing political disabilities. Members introducing private bills, petitions, or memorials "deliver them to the clerk, indorsing their names and the reference or disposition to be made thereof."[1] These petitions, memorials, and private bills are then entered on the *Journal*, with the names of the members presenting them. A copy of this entry is published in the *Congressional Record*. All other bills, memorials, and resolutions are delivered in the same manner, indorsed with the names of the members introducing them, to the speaker, and are referred by him to their appropriate committees. The bills, resolutions, and documents thus referred are entered on the *Journal*, and, as in the case of private bills, the entry is printed in the *Congressional Record*. The bill having been introduced into the House, and read twice on different days, the first time by title and the second time in full, passes into the hands of one of the standing committees.[2] The committee having charge of the bill practically determines its fate. Of course, no committee has power formally to reject a bill; but if a bill received is not approved by the committee it may be reported to the House with the recommendation that it "do not pass," or it may be neglected and lie in the committee, and expire with the Congress. A committee receiving a bill referred to it has full power over it, but cannot change its title or subject. It may, however, set aside all the sections of the bill and substitute other sections covering the same subject. In considering an important bill the committee having it in charge is accustomed to summon various persons to furnish information as to the character and need

[1] *Rules of the House of Representatives*, xxii.

[2] *Rules and Practice of the House of Representatives*, 163–168; 281–285.

of the legislation proposed by the bill in question. The persons summoned are required to present the information they have to communicate in the form of a continuous statement, or this information may be drawn out by a system of questioning and cross-questioning. The questions, as well as the statements of the persons giving the information, are printed for the use of members of the committee and of the House, particularly when the bill under consideration deals with matters of great importance. When a committee reports to the House, an hour is set apart for debating the bill recommended in the report. The member making the report and having charge of the business determines who shall participate in the debate during this period. He may occupy the whole hour himself, if he wishes; but this is not customary. "He does not, of course, yield his time indiscriminately to anyone who wishes to speak. He gives way, indeed, as in fairness he should, to opponents as well as to friends of the measure under his charge; but generally no one is accorded a share of his time who has not obtained his previous promise of the floor; and those who do speak must not run beyond the number of minutes he has agreed to allow them." [1] In this hour, moreover, no amendment may be made without the consent of the member who has reported for the committee, and who controls the discussion. The procedure here described indicates the power of committees in legislation. The chairman of each committee has extensive privileges with respect to all business referred to his committee.

In the English Parliament the ministry holds the position of a single powerful committee and is largely responsible for the character of the laws passed. As Mr. Bryce says, "If a bad act is passed or a good bill rejected, the blame falls primarily upon the ministry in power." [2]

[1] Wilson, *Congressional Government*, 76.

[2] *American Commonwealth*, i, 156.

Persons accustomed to the English system have sometimes been disposed to criticise the American system, under which a large number of committees exercise almost equal authority with respect to the subjects committed to them respectively. They have called attention to the fact that in this extensive subdivision of the work nobody appears to be responsible. In case bad laws are passed the Cabinet cannot be blamed, for it has no voice in lawmaking. The House may shirk responsibility on the ground that it was in a position where it was practically obliged to follow the decision of the committee; and the great number of the committees, whose members are generally unknown, make it impossible to call anybody to account. The difficulty or impossibility of properly fixing responsibility for bad laws is set down as one of the defects of the American system. Other defects are that it facilitates corruption, and by destroying the unity of the legislative machine produces laws not necessarily in proportion to the legislation actually needed.

On the other hand, there are certain advantages of the American system of many committees:

1. It furnishes agencies for examining the large number of bills introduced, and smothering those that ought not to be allowed to survive and take up the time of the whole legislative body.

2. Each committee constitutes a small and efficient body for gathering information concerning the subjects of the bills referred to it. By this means many lines of investigation may be carried on at the same time.

3. Through inquiries carried on by the committees, the House may have at its command extensive and detailed information concerning the conduct of the various departments.

4. This system furnishes opportunities for making specially qualified members chairmen of committees, and

thus bringing their special knowledge and training to bear on important departments of the Government.

5. In the committees, the administrative officers, particularly members of the Cabinet, have opportunities to urge such legislative measures as are of special interest to the executive departments; and by this means there is extended to the members of the Cabinet some of the facilities for influencing legislation that are enjoyed by the English ministry.

Topics.—Reason for committees in the Senate and the House.—Appointment of committees.—Committee on Committees.—The Steering Committee.—Relation of committees to dominant party.—Committee of the Whole.—Committee on Rules.—Work of committees in legislation.—In special functions.—Advantages of American system of many committees.

References.—Bryce, *American Commonwealth*, i, 150–170; Dawes, *How We Are Governed*, 127, 141; Hart, *Actual Government*, 233–254; Macy, *Our Government*, 185–188; Wilson, *Congressional Government*, 60–130.

44. Enacting a Law.—When a bill is reported to the Senate or the House by the committee that has had it in charge, it is read a third time; that is to say, its title is announced, and it is brought to the attention of the House for final action.

The enacting clause of a bill before either house of Congress is: "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.*" An amendment is any proposed change in a motion or a bill. Any amendment may be amended, but an amendment to the second amendment will not be accepted. Having passed both houses, the bill is signed by the speaker of the House and the president of the Senate, and sent to the President for his signature. If not returned within ten days after it shall have been presented to the President, it

"shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law." Any bill may originate in either house, except bills for raising a revenue, which shall originate in the House of Representatives. But revenue bills originating in the House may be amended in the Senate. The English House of Commons, in its struggle with royal authority, insisted on originating all revenue bills. This gave the Commons virtual control of the national treasury and made possible the achievement of its independence. The circumstances which led to the establishment of this principle in England were wanting in the United States, yet in spite of this fact the English precedent was followed.

In the course of a bill's progress through Congress, a rider is sometimes attached to the bill. A rider is a clause, a paragraph, or a section added to a bill, dealing with a subject other than that treated of in the bill. It is thus added for the purpose of overcoming an objection to it, which does not exist with respect to the bill to which it is attached. It is resorted to where the majority in the Legislature is sufficient to pass it as a separate bill, but not sufficient to pass it over the Executive veto, and particularly where it is known that as a separate bill it would be vetoed. By attaching it to some necessary bill, as, for example, to the general appropriation bill, it is expected that it will receive the formal approval of the Executive; for it is supposed that he will be less reluctant to have it become a law than to incur the odium of embarrassing the Government by vetoing the appropriation bill. In order that a rider may be employed effectively, the Executive must be under obligation to approve or to veto a bill as a whole. To prevent resort to this legislative device in State legislatures, many of the States require a bill to relate to only a single subject, and give to the governor the power to veto parts of appropria-

tion bills and to approve other parts. It has been suggested that the President should be granted this power.

Concurrent resolutions are resolutions "adopted by both houses, chiefly on the subject of adjournment of the session." They do not require the President's signature. On the contrary, a joint resolution is adopted by both houses, but requires the signature of the President.

A joint resolution is introduced in the same manner as a bill; and, after it has passed both houses, it requires the approval of the President in order to be valid. It was used instead of a treaty in the annexation of Texas, in 1845; also in the annexation of Hawaii, in 1898. A joint resolution may sometimes be passed where a treaty would be defeated. It would have required a two-thirds vote of the Senate to annex Texas or Hawaii by treaty, but only a majority of the Senate and of the House of Representatives was required to adopt a joint resolution. By this means a large opposition minority in the Senate may be defeated.

Topics.—Reading a bill.—Enacting clause.—Amendments.—Place of origin.—A rider.—Concurrent resolutions.—A joint resolution.

References.—Dawes, *How We Are Governed,* 150–160; Ford, *American Citizen's Manual,* i, 22–26; Hart, *Practical Essays,* 206–233; Hart, *Actual Government,* 245–256; Hinsdale, *American Government,* 187–192.

45. Voting in Congress.—Voting in Congress is usually *viva voce,* or by "yeas and nays." The ballot is seldom used, but the Constitution requires that the yeas and nays shall be entered on the record on the demand of one-fifth of the members present. It is required, also, that the yeas and nays shall be recorded in cases of votes on bills vetoed by the President. A two-thirds vote is required to suspend the rules, to modify the adopted order, or to pass in either house a bill vetoed by the President. The two-thirds here

referred to is construed to be two-thirds of the members present. The calling of the roll for yeas and nays is sometimes used by a filibustering minority to delay the transaction of business, which is the main purpose of the obstructive tactics designated by the term "filibustering."

As used with reference to legislation in the United States, the term "filibustering" is applied to the attempts of the minority of a legislative body to delay the taking of a vote. The methods employed are different under different circumstances. In the Senate there is no rule for closing a debate, and senators have sometimes taken advantage of this freedom, by long speeches to prevent action on measures obnoxious to the minority. The Federal Elections Bill was under discussion during December, 1900, and January and February, 1901. The minority sought to defeat the measure by tiring out the majority, and succeeded both in this and in defeating the bill by making twenty-five long speeches against it, and by announcing that they would talk indefinitely.

Under the rules of the House there are effective ways of checking filibustering. In the first place, any member who can get the floor may move "that the previous question be now put." This means that the pending question, the question under discussion, be voted on. As the motion of the "previous question" is not debatable, the speaker must put it at once. If carried, the debate ceases, and the question which the opposition has been trying to delay must be voted on. In the second place, the rules of the House, with respect to the number and length of the speeches that members may make, render it practically impossible to carry on a filibustering campaign with long and frequent speeches. On the other hand, by moving that the House adjourn, that it take a recess, or that when it adjourns it adjourn to some specified time, or by making other motions that are strictly legitimate under the rules, much time

may be consumed, particularly as these motions involve, each time, calling the roll of an assembly of nearly 400 members.

A tie vote is that in which equal numbers of votes are given on the two sides of the question. In such a case the motion is lost. This is the rule in the House, and the speaker votes only when his vote would be decisive if counted. The casting vote is given in the Senate by the Vice-President in case of a tie, but this power is not exercised by the president *pro tempore*. The previous question is the name given to a motion that the debate cease, and that a vote be taken immediately on the question under consideration. This motion is not debatable, and is used only in the House. The Senate makes use of no such means for closing a debate.

Topics.—Methods of voting.—Roll-call in filibustering.—Requirement of two-thirds vote.—A tie.—The previous question.

References.—Dawes, *How We Are Governed*, 133–137, 144; Hart, *Actual Government*, 252; Hinsdale, *American Government*, 179; Miller, *Lectures*, 197.

46. Parliamentary Law.—The course of business in Congress is conducted under a body of rules, regulations, and laws which are comprehended in the general designation of parliamentary law. The essential features of this law have their origin in the usages of the British Parliament, and have been carried to other nations as other nations have imitated the legislative institutions and practice of England. In passing from England to other countries, or in being applied to different legislative bodies existing under different social conditions, this law has undergone certain modifications; but even under these new conditions it has retained the main characteristics which it possessed in the country of its origin.

Topics.—Definition of parliamentary law.—Origin of it.

References.—Hart, *Actual Government*, 239–244; Hinsdale, *American Government*, 178; Miller, *Lectures*, 194–196.

FOR ADVANCED STUDY

Organization of the Government under President Washington.—Hunt, *Life of James Madison*, 168, 169; Schouler, *United States*, i, 80–105; McMaster, *United States*, i, 533–535, 540–544; Hart, *Formation*, 141–143; Hildreth, *United States*, iv, 101–108; Lodge, *Washington*, ii, 61–72; Hart, *Formation*, 143–145; Johnston, *American Politics*, 20, 21; H. von Holst, *Constitutional Law*, 67–77; Bryce, *American Commonwealth*, i, Chap. IX; Madison's *Letters*, i, 423–427; Hamilton, *The Federalist*, No. 84.

Treaty with Great Britain, November 19, 1794 (Jay's Treaty).—MacDonald, *Select Documents*, ii, 114–130; Pellew, *John Jay*, 301–317; McMaster, *United States*, ii, 212–235, 245–256, 263–284; Hunt, *James Madison*, Chap. XXIII; Lodge, *Washington*, ii, 176–207; H. von Holst, *United States*, ii, 122–128; Hildreth, *United States*, iv, 539–564, 584–616; Johnston, *American Politics*, 37–39; Gordy, *Political Parties*, i, Chap. XV; Schouler, *United States*, i, 289–305, 307–314; Hart, *Formation*, 162, 163; Hart, *Contemporaries*, iii, 315–319; Hamilton, *Works*, v, 106–137; Ames, *Works*, ii, 37–71; ed. 1809, 58–93.

How Federal Laws Are Made.—*North American Review*, clix, 537–544; clxii, 14–20; *Albany Law Journal*, xlviii, 386–390; American Bar Association *Reports*, 1887, 396–405; Wilson, *Congressional Government*, Chaps. II–IV; Parton, *Topics of the Time*, Nos. 3, 6, 8; American Historical Association *Papers*, v, 367–375; H. von Holst, *Constitutional Law*, §§ 31–34; Bryce, *American Commonwealth*, i, Chaps. XVI–XXI; Follett, *The Speaker*, Chaps. IV–IX; Hart, *Practical Essays*, No. 9; Lodge, *Historical and Political Essays*, 169–197.

The Organization and Proceedings of Congress.—Follett, *The Speaker;* Hinsdale, *American Government*, Chaps. XVI–XXV; Bryce, *American Commonwealth*, i, Chaps. X–XXI; H. von Holst, *Constitutional Law*, §§ 20–24, 28–34; Cooley, *Constitutional Law*, 47–52, 54–99; Ford, *American Politics*, Chaps. XVIII–XXI; Kerr, *United States Senate;* Lalor, *Cyclopædia*, see articles on *Censures, Congress (U. S.), Congress (Powers), Congress (Sessions), House of Representatives, Riders, Salary Grab, Senate;* Wilson,

Congressional Government; Lowell, *Essays on Government;* McKee, *Manual of Congressional Practice;* McConachie, *Congressional Committees.*

The Speaker.—Bryce, *American Commonwealth,* i, 128–141; Benton, *Thirty Years' View;* Blaine, *Twenty Years in Congress;* Cox, *Three Decades;* John Sherman, *Recollections;* Follett, *The Speaker,* Chaps. II, III, X, XI; Hart, *Practical Essays,* No. 1; *Congressional Record.*

The Formation and Work of Congressional Committees.—McConachie, *Congressional Committees;* Snow, *Defense of Congressional Government* (American Historical Association *Papers,* iv, 309–328); Bryce, *American Commonwealth,* i, Chaps. XIV, XV; H. von Holst, *Constitutional Law,* §§ 32, 37: *Congressional Record; House and Senate Reports.*

The Legal Tender Acts.—See *Legal Tender Cases,* 12 Wallace, 457; 110 United States, 421; Dewey, *Financial History,* 362–367; Knox, *United States Notes,* 156–166; Hart, *Life of Chase,* 389–414; Upton, *Money in Politics,* 157–170.

Description of the House of Representatives in Action.—*Congressional Record; Congressional Directory;* Harrison, *This Country of Ours,* 45–48; Bryce, *American Commonwealth,* i, 138–170; *Rules and Practice of the House of Representatives.*

The Election of United States Senators.—Dallinger, *Nominations for Elective Offices,* 89; Bryce, *American Commonwealth,* i, 95, 108–120; *Forum,* 18: 270–278; 21: 385–397; *Atlantic Monthly,* 68: 227–232.

The Powers of the Speaker.—Follett, *The Speaker;* Bryce, *American Commonwealth,* i, 48, 134–137, 391; *Rules and Practice of the House of Representatives.* See *Digest.*

CHAPTER V

WHAT CONGRESS CAN DO

49. The General Rule.—We shall be able to get a clear idea of this subject if we remember that Congress can do only those things that it is authorized to do by the language of the Constitution. The part of the Constitution which deals with this matter is the eighth section of the first article. This section should be carefully read at this point. The powers that are conveyed to the Congress by it are called delegated powers. They are called so because the Constitution in the beginning was adopted by the States, and the States were thought of as giving up, or delegating, to the central Legislature some of the powers which they had possessed. All the powers that were not thus given up, or delegated, were retained by the States. This is the reason for calling the powers which the States now have, "reserved" powers. They have not been given away. They have been reserved. The tenth amendment to the Constitution expresses this in the simplest possible way. It says, "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Articles of Confederation expressed a similar idea, but contained the word *expressly* before "delegated." The makers of the Constitution omitted this word, because they saw that it would be impossible to indicate expressly and in detail all the subjects on which the powers of the Federal

Government might, in the future, be exerted. They wished Congress to be able to do whatever might be necessary to carry into execution the powers that might be expressly granted. The powers that were not expressly granted, but were necessary to make effective those that were expressly granted, came to be called "implied" powers. The character of these implied powers may be illustrated in this way: Congress was expressly authorized, among other things, to raise and support armies; but it was not expressly authorized to issue paper money and make it legal tender for the payment of debts. But Congress did, during the Civil War, issue paper money and made it legal tender. It claimed that it could do this because the use of such paper money was necessary to enable it to maintain the armies it was authorized to raise and support; hence, in the opinion of Congress, it was implied that that body might issue the money in question. Whether, in any case, a claim like this is valid has to be determined by the courts.

Topics.—General rule as to power of Congress.—Delegated powers.—Reserved powers.—The tenth amendment.—Implied powers.—Reason for not requiring powers to be *expressly* delegated.

References.—Miller, *Lectures*, 227–236; Cooley, *Constitutional Law*, 54.

50. **Taxation.**—Congress can levy and collect taxes. It is through taxation that the Government receives funds for meeting its numerous expenses. In order that civilized society may exist, men must have rights and be able to make them recognized; but rights are created or authoritatively defined by government, and it is to the Government that the individual person must look for the maintenance of his rights. Yet government can exist only under the condition of being able to levy and collect taxes. It is only by the revenues derived from taxation that the State is

able to pay its officers and meet all its other necessary expenses. The power to tax, therefore, belongs to the State as a quality without which the State cannot exist; and the amount of taxes it may levy is limited only by the State's own estimate of needed revenue.

Topics.—Purpose of taxation.—Power to tax fundamentally necessary for a State.

References.—Ford, *American Citizen's Manual,* Part II., 137–149; Hart, *Actual Government,* 381–407; Lalor, *Cyclopædia,* iii, 618; i, 712.

51. Classes of Taxes.—There are two general classes of taxes. These are direct taxes and indirect taxes. Direct taxes are those which are demanded from the persons who are expected to bear the burden of their payment. A poll tax is a direct tax. A tax on land also is regarded as a direct tax. "Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another." If a merchant, for example, pays duties on goods imported, he will add the amount of the duties to the selling price of the goods. By this means he shifts the burden of the duties from himself to the persons who buy and use the goods. If an excise tax is collected from the manufacturer of cigars, for instance, the amount of this tax will be added by him to the price of the cigars and will thus be ultimately paid not by the producer, but by the consumer. Taxes of this kind are indirect taxes. The persons who advance the taxes to the collector indemnify themselves by receiving an additional price from the consumer. Thus the consumer pays the tax indirectly. Many persons object to paying direct taxes, because they seem to be receiving nothing for their money; but the payment of heavy indirect taxes excites less complaint, because the tax is concealed in the price of the goods purchased.

There are two conditions imposed on Congress's power of taxation: The first of these is that direct taxes shall be apportioned among the States according to their population; the second is that all other kinds of taxes imposed by Congress "shall be uniform throughout the United States."

There has been much discussion as to what taxes, within the meaning of the Constitution, are direct taxes. The more restricted view embraces only capitation taxes and taxes on real estate. Justice Miller, in his lectures on the Constitution, presents this view. Some decisions by members of the Supreme Court add to these two items taxes on personal property. Indirect taxes are of two classes: One class embraces indirect taxes levied usually on articles produced in the country where the tax is collected. This is an excise tax. The indirect taxes of the other class are such as are levied on goods, produced abroad, when they are brought into the country. Indirect taxes of this second class are called customs duties. Both excise taxes and customs duties are thus indirect taxes, and are both levied and collected by the Federal Government. The first are taxes for internal revenue; the second are taxes on imports.

Topics.—Direct and indirect taxes.—Conditions imposed on Congress's power of taxation.—Definition of direct taxes.—Instances of indirect taxes.

References.—Hinsdale, *American Government,* 195–198; Miller, *Lectures,* 236–239.

52. Equality and Uniformity of Taxation.—Many of the State constitutions require that taxation shall be *equal* and *uniform;* but the Federal Constitution requires simply that all duties, imposts, and excises shall be uniform throughout the United States. Equality of taxation, in the sense of an apportionment of the burden "so that each person shall feel neither more nor less inconvenience from his share of the payment than every other person experiences from his,"

is unattainable; it is, however, an ideal that legislators may well keep in mind in devising systems of taxation. "Equality of contribution is not enjoined in the Bill of Rights, and probably because it was known to be impracticable." Uniformity of taxation may be secured when taxes are imposed by general laws that apply in all parts of the territory under the jurisdiction of the body levying the taxes. All persons in paying the taxes imposed may not make equal sacrifices; but the system, whatever it is, applies uniformly and without exception throughout the region for which it was formed.

The taxes which the Constitution provides "shall be uniform throughout the United States" "are not required to be uniform as between the different articles that are taxed, but uniform as between the different places and different States. Whisky, for instance, shall be taxed no higher in the State of Illinois or Kentucky, where much of that article is produced, than it is in Pennsylvania. The tax must be uniform on the particular article; and it is uniform, within the meaning of the constitutional requirement, if it is made to bear the same percentage over all the United States."

Topics.—Equal and uniform taxes.—Meaning of phrase, "shall be uniform throughout the United States."

References.—Miller, *Lectures*, 239–242.

53. Taxation of Governmental Means.—An important limitation of the taxing power is found in the principle that all subjects over which the power of a State extends are objects of taxation, and that those over which it does not extend are exempt from taxation. In carrying out this principle it has been decided that the State governments cannot lay a tax upon the constitutional means employed by the Government of the Union to execute its constitutional powers. A bank created by the United States as its

fiscal agent, or the revenue stamps or treasury notes issued by the United States, or the bonds or other securities issued by the United States, or the salaries of Federal officers are not subject to taxation by the States. On the other hand, the United States cannot tax a railroad owned by a State, or the process of the State courts, or the salary of a State officer, or a State or municipal corporation. These rules rest on the principle that the Federal Government and the State governments must be left unobstructed by extraneous legislation in carrying out their legitimate operations; but the power of either to tax the constitutional means of the other involves the power to destroy these means, and "the power to destroy may defeat and render useless the power to create." "There is," therefore, "a plain repugnance in conferring on one government a power to control the constitutional measures of another." Any other rule would permit one government to tax all the means employed by another government "to an excess that would defeat all the ends of government."

Topics.—Governmental means exempt from taxation.—Instances.—Basis of this rule.

References.—Cooley, *Constitutional Law*, 60–62.

54. Purposes of Taxes.—That clause in the Constitution conferring the power to levy and collect taxes specifies the purposes for which the revenue derived from taxes may be used. It may be used "to pay the debts and provide for the common defense and general welfare of the United States," but its use for merely private ends is not authorized. A tax on imports, that has no other purpose than to raise the price of an article so that a manufacturer of it in the country may receive a larger profit, would not appear, when considered from this point of view, to be supported by the Constitution. When, however, a tax on imports is levied for revenue which is designed to be used for public purposes,

its validity is not impeached by the fact that it causes a rise in the price of the article produced in the country, and thus enables the manufacturer to make a larger profit. The part of the revenue which is paid for salaries is a source of private advantage to the employees of the Government; but it is expended for a public purpose, inasmuch as the service which is thus secured is presumed to contribute to the general welfare. This principle is applicable also to the payment of pensions. Some public advantage must be assigned to justify the imposition of a tax or the expenditure of any part of the revenues collected. "There can be no lawful tax which is not laid for some public purpose"; but the power to determine what is a public purpose belongs to the Legislature, and a court will intervene to declare a tax void only when the absence of all possible public interest in the purposes for which the funds are raised is "so clear and palpable as to be perceptible by any mind at first blush." "All cases of doubt must be solved in favor of the validity of legislative action."

Topics.—Purposes of Federal taxes.—Protective duties.—Salaries and pensions.—Criterion of lawful tax.

References.—Cooley, *Constitutional Law*, 57–60.

55. **Federal Taxes.**—As already stated, the Federal Government relies chiefly on indirect taxes, while the State governments draw their revenues mainly from direct taxes; but direct taxes may be laid by the Federal Government. When this is done it is provided by the Constitution that they shall be apportioned among the States in proportion to the population represented in the lower house of Congress. It is expressly provided that "no capitation or other direct tax shall be laid" except in this manner. When direct taxes were laid by the Federal Government in 1798, 1813, 1815, and 1816, they were laid on lands, improvements, dwelling-houses, and slaves; in 1861, they were laid only

on lands, improvements, and dwelling-houses. Whenever the Government has imposed a tax which is recognized as a direct tax, it has never been applied to any objects but real estate and slaves; but a tax laid on carriages kept for use is not a direct tax; nor is a tax on the circulation of banks, or an execution tax, or an excise tax to be regarded as a direct tax.[1]

The chief sources of revenue for the Federal Government are customs duties and excise taxes, or taxes on the production of commodities. Duties on imports are collected by all civilized nations, but the different nations pursue widely different policies with respect to the number of articles taxed and the rates of taxation. There are two general theories under which duties are imposed on imports. One is that by imposing a duty on articles which are brought into the country the Government secures a revenue and, at the same time, increases the price of the imported articles so that manufacturers can produce similar articles with larger profits in the country thus protected; and the larger profits thus made possible will, it is expected, stimulate the growth of industries. Under this theory a special effort is made to tax the importation of those wares that are or may be produced in the country imposing the tax. The other theory is that import duties should be laid in such a way as to secure a revenue without increasing the price of the articles produced in the country, or creating an artificial stimulus in the production of any special class of articles. This theory, therefore, provides for import duties principally on articles produced only abroad. The purpose of the tax in the one case is revenue and protection to home industries. The purpose of the tax in the other case is revenue without special regard to protection. The revenue from excise taxes or taxes on domestic manufactures can be more

[1] Hylton *vs.* United States, 3 Dallas, 171; Pacific Insurance Co. *vs.* Soule, 8 Wallace, 433; Veazie Bank *vs.* Fenno, 8 Wallace, 53.

readily varied than those derived from customs duties; and for this reason changes in the excise taxes are often made when the emergency requires an increase or diminution of the income of the Federal Government. In case of a sudden demand for an increased expenditure to meet the extraordinary expenses of a war, funds for this purpose are readily collected by the extension of the system of excise taxation.

Topics.—Indirect taxes.—Direct taxes.—Chief sources of Federal revenue.—Two theories for imposing customs duties.—The best taxes for emergency revenue.

References.—Bryce, *American Commonwealth*, i, 171–179; Hart, *Actual Government*, 394–406; Willoughby, *Rights and Duties*, 273.

56. Payment of Debts.—When the Constitution was adopted, thus changing the form of government, a question naturally arose concerning the debts contracted by the Government under the Articles of Confederation. If the obligations of the old Government were not assumed by the new Government, a strong opposition to the change was inevitable. If, moreover, a State had rejected the Constitution, it might have claimed to be released from any part of the obligations of the central Government. To set aside any doubts that might arise on these points, the makers of the Constitution declared that "all debts contracted and engagements entered into before the adoption of the Constitution, shall be as valid against the United States under this Constitution as under the Confederation."[1] When the nation came out of the Civil War under the burden of an enormous debt, it again gave positive assurance of its good faith and its determination to meet all legal obligations that rested on it. In the fourteenth amendment to the Constitution it declared, "The validity of the public debt of the United States, authorized by law, including debts in-

[1] Constitution, Art. VI.

curred for payments of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void." This declaration was not necessary; but it emphasized the principle that lawful debts should be paid; or that obligations entered into by a part of the nation in rebellion constituted, in case of defeat, no proper claim on the Government against which the rebellion had been undertaken. It was a pledge of good faith made in the most solemn manner possible and by the highest authority in the land. This declaration did, however, reaffirm the principle that the incidental losses of war do not constitute a claim on the victorious party.

Topics.—Debts contracted under Articles of Confederation.—Constitutional declaration.—Civil War debts.—Fourteenth amendment.

References.—Lalor, *Cyclopædia*, i, 725–734; Hart, *Actual Government*, 423–429.

57. Borrowing Money.—Congress can borrow money. The need of this provision is to enable the Government to meet extraordinary expenditures. Under ordinary circumstances, during times of peace, the Government is expected to meet its current expenses with the revenues derived from the regular system of taxation; but in undertaking a war, or great public works, it is necessary to have a very large amount of money for use during a short period. It is thought that the war carried on, or the harbor constructed, or the canal dug will confer a benefit which the nation will enjoy for several generations; and it therefore appears just not to collect by taxation the whole fund for

the undertaking in the time required to wage the war or to complete the works in question.

Of course every generation has its own immediate work to be performed wherein posterity is the chief beneficiary; but there are some great undertakings, like the Civil War, or the constructing of the Panama Canal, which may be expected to occur only once in the nation's lifetime, and in the benefits of which all subsequent generations will participate. The payments needed to carry on such an undertaking should be extended over many years. In order to do this, the Government borrows money and repays it within such a period as may seem expedient in view of the resources of the nation.

In borrowing money the Government issues bonds. These bonds are notes promising to pay to the holder the sum named in the bond itself, together with interest at a fixed rate. The bonds are then sold; and the purchaser, in effect, loans to the Government the amount stated in the bond or bonds purchased.

Topics.—The need of borrowing.—The justification of borrowing.—The method.—Use of bonds.

References.—Hinsdale, *American Government*, 199; Hart, *Actual Government*, 412, 426, 429.

58. Regulation of Commerce.—Congress can regulate commerce. Under the Articles of Confederation the power to regulate commerce was vested in the several States. This gave certain States an advantage over others in matters of trade and made it practically impossible to secure uniform regulations for all parts of the country. From this condition arose jealousy and local antagonisms which impressed upon the people the need of a closer union of the States and the establishment of a central organization endowed with power to regulate foreign trade and trade among the States. When, therefore, the Constitution was adopted, Congress

was given power "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." The word commerce, as here used, "describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on this intercourse." [1]

Navigation is included in the meaning of the term commerce and, under this provision, when not confined within the limits of a single State, is subject to regulation by Congress. This provision comprehends all commercial intercourse, however carried on, whether over railroads, bridges, or ferries, or by boats on rivers or along the coast, or by any other means which may be brought into use, whenever this intercourse leads beyond the limits of any State. Whatever devices for carrying on commercial intercourse the inventive genius of man may create in the future will be covered by the powers granted in this provision.

"The powers thus granted are not confined to the instrumentalities of commerce or the postal service known or in use when the Constitution was adopted; but they keep pace with the progress of the country and adapt themselves to the new developments of time and circumstance. They extend from the horse with its rider to the stage coach, from the sailing vessel to the steamboat, from the coach and steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth." [2]

The principal agency employed by the Federal Government in regulating trade among the States is the Interstate Commerce Commission. It consists of five members, appointed by the President. It has power to require

[1] Gibbons *vs.* Ogden, 9 Wheaton, 1.

[2] Pensacola Telegraph Company *vs.* Western Union Telegraph Company, 96 United States, 9.

reports from railroads on their operations; it may hear complaints, carry on investigations, and compel attendance of witnesses. The decisions of the courts are gradually defining the powers of the Interstate Commerce Commission and making it an effective agent of the Federal Government in regulating commerce among the States.

But all buying and selling, all trade within the limits of any State, and all commercial intercourse between persons at different points within a State, however carried on, is under the control of the State government and is not covered by Federal legislation.

The power to regulate commerce "with the Indian tribes" is not invalidated or limited by the fact that the tribe resides within the limits of a State. For "the treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States; and provide that all intercourse with them shall be carried on exclusively by the Government of the Union."[1] Neither a State nor an individual person has the right to purchase lands from the Indians; this right belongs exclusively to Congress.

Topics.—Regulation of commerce.—Meaning of commerce in this connection.—Extent of State control.—Regulation of commerce with Indian tribes.

References.—Ford, *American Citizen's Manual*, Part II, 33–39; Hart, *Actual Government*, 446–459; Hinsdale, *American Government*, 211–215; Miller, *Lectures*, 433–473.

59. Prohibition of Commerce.—Congress can prohibit commerce. The power to regulate commerce involves the power to prohibit it. An instance of prohibition is seen in the Embargo Act of 1807.[2] This act provided that "an embargo be laid on all ships and vessels in the ports

[1] Worcester *vs.* Georgia, 6 Peters, 557.

[2] McLaughlin, *History of the American Nation*, 273–275.

and places within the limits or jurisdiction of the United States, cleared or not cleared, bound to any foreign port or place; and that no clearance be furnished to any ship or vessel bound to such foreign port or place except vessels under the immediate direction of the President of the United States."

The purpose of this act was to prevent trade between the United States and other countries. Other nations have sometimes attempted in a similar manner to cut off all commercial intercourse with foreign nations. During the period between the early part of the seventeenth century and the middle of the nineteenth, the Japanese government prohibited all trade with other countries and prevented all immigration and emigration. The prohibition in the United States lasted only a comparatively short time. When the law was passed, no definite time was fixed for its continuance in force; but after two years it was repealed, in 1809.

The Embargo Act affected disastrously all shipping, and thus bore more heavily on New England than on any other part of the country. It threw the carrying trade largely into the hands of British merchants. The exports from the United States declined, in 1808, by four-fifths of their value, that is to say, from $110,000,000 to $22,000,000. The opposition to the act was taken up by the New England State courts. They declared it unconstitutional, on the ground that it annihilated commerce, while Congress was empowered by the Constitution to regulate it. The State legislatures of New England took a position not unlike that assumed in the Kentucky and Virginia resolutions, and assumed the right to protect their citizens against this oppressive act of Congress. The State courts were hostile to it, and the Federal courts in New England seldom found juries who would convict for violating it. The Federalists went so far in their hostility as to declare in the United States Senate that the people were not bound to submit to

it, and that war would follow a persistent attempt to enforce it. This view was confirmed by John Quincy Adams, who reported that, if the Government should attempt to use force, the New England States would temporarily or permanently withdraw from the Union.

Topics.—Prohibition of commerce.—Embargo Act, 1807.—Japan's policy of non-intercourse.—Opposition to the embargo.

References.—Cooley, *Constitutional Law*, 68; Channing, *Students' History of the United States*, 350; McLaughlin, *History of the American Nation*, 274.

60. Citizens and Citizenship.—Congress can pass laws relating to citizenship and naturalization. In the ordinary sense of the term a citizen is an individual person who owes allegiance to a state and who has the right to demand protection from that state. Such a person may or may not possess political rights. Sometimes, however, only such persons as possess political rights are called citizens. Properly, each of these two classes of persons, namely, those who have political rights and those who do not have political rights, should have an independent designation. They might perhaps be called passive citizens and active citizens; for the members of one class are passive under the protection of the government, while the members of the other class participate actively to a greater or less extent in the conduct of the government itself. Any person who was one of the people of any one of the States when the Constitution was adopted became, *ipso facto*, a citizen. Additions to this number have been made and may still be made in two ways: first, by birth; second, by naturalization.

1. Citizens by birth are persons who are born in the United States and who continue to live under its jurisdiction till they are of age.

2. Citizens by naturalization are persons who were born subject to the jurisdiction of a foreign power, and who have

had conferred upon them the essential rights, privileges, and prerogatives of citizens born in the country of their new residence.

Congress has power to naturalize aliens, which means that Congress has power to receive an alien into the condition of a citizen, and to invest him with the rights and privileges of a natural citizen. Each sovereign state in conferring citizenship establishes the terms under which this status is held by the person receiving it. If a person in whose native country it is maintained that citizenship is inalienable, is naturalized in the United States, there arises at once a conflict of authorities. This conflict has often arisen between the United States and other nations. Formerly English judges insisted that no English subject could lay aside his obligation of allegiance except by the consent of the English Government. The President of the United States has, however, held that naturalization in the United States releases the person naturalized from all allegiance to his native country. The practical opposition of these views has been manifest on several occasions. In the War of 1812 Englishmen, naturalized in the United States, who were taken in arms against England were regarded as traitors. Irishmen, naturalized in the United States, have often shown their hostility to England and have been tried in England as if they were still subjects of Great Britain. The representatives of the United States have, in these cases, insisted that they were unable to distinguish between naturalized and native citizens, but, at the same time, have acted under instructions not to interfere in behalf of persons who had become naturalized and had practically abandoned their new citizenship, while, at the same time, relying on it to protect them in the prosecution of treasonable designs against the government of their native country. The views represented by England and the United States appeared to be irreconcilable. Then, in 1868, Congress declared that

"expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness"; and pronounced the denial, restriction, impairment, or questioning of the right of expatriation by an officer of the United States to be inconsistent with the fundamental principles of the Republic. The view here expressed has been accepted by other civilized nations. In treaties between the United States and a number of European nations, including Austria, Great Britain, the German Empire, Belgium, Norway and Sweden, and Denmark, it is maintained:

1. That naturalization in accordance with the laws of the adopted country, after a residence of five years, shall free the naturalized person from his native allegiance.

2. That the simple declaration of intent to become a citizen shall not have the effect of naturalization.

3. That a renewal of domicile in the mother country with the intent not to return shall work a renewal of the former allegiance; and two years' residence is presumptive evidence of such intent.

At least two years before a person may be naturalized, he is required to declare on oath that he wishes to become a citizen of the United States. At the same time he is required to renounce allegiance to any foreign sovereign, and to declare that he will support the Federal Constitution. When finally he presents himself for admission to citizenship, the court admitting him must have satisfactory evidence that he has resided five years in the United States and one year in the State or Territory where the court is held; and that he has maintained during his residence the proper conduct of a citizen. What change of status has been made by the process of naturalization may be discovered by considering that as an alien he remained in the country only by sufferance; and that, while many of the States permitted him to hold and to convey real estate, he had no political

rights. After his naturalization, however, he became entitled to all the rights and privileges which any citizen of the country enjoys. Moreover, as a citizen of a State, he is "entitled to all the privileges and immunities of citizens of the several States." Among the privileges and immunities of State citizenship are protection by the government, the enjoyment of life and liberty, the right to acquire and possess property of every kind, the right to pursue and obtain happiness and safety. The citizen of a State is nevertheless subject to such restraints as the government may prescribe for the general good. The citizen of a State also enjoys the right to pass through or to reside in any other State. He may claim the benefit of the writ of *habeas corpus;* he may institute and maintain actions of every kind in the courts of the State; and he may take, hold, and dispose of property.

Besides citizenship in a State, to which reference has just been made, there is also citizenship in the Union. Both may be enjoyed by the same person. As a citizen of a State and at the same time of the United States, one may claim protection from both the State and the Federal governments, and in return one owes allegiance to the two governments. The citizen of the United States is at the same time a citizen of a State. Residents in the Territories or in other places exclusively under the jurisdiction of the United States are merely citizens of the Union. They owe no allegiance to any State, and they look only to the United States for protection.

The following cases are special cases under the law of citizenship and naturalization:

1. Children of citizens, although born abroad, shall be considered citizens.

2. Children of naturalized persons, if less than twenty-one years old when their parents are naturalized, shall be considered citizens if they reside in the United States.

3. Minors coming into the United States and residing here three years before becoming twenty-one years old may be considered citizens, without previous declaration, after a residence of five years.

4. A woman who might be naturalized, marrying a citizen, shall be considered a citizen.

5. If an alien who has declared his intention to become a citizen dies before he has been fully naturalized, his widow and children shall be considered citizens on taking the oath.

6. Soldiers at least twenty-one years old, honorably discharged from the army of the United States, may become citizens after one year's residence, without declaration of intention.

7. Sailors having served three years on a United States ship may be regarded as citizens, after making a declaration.

8. Five consecutive years of service in the navy of the United States admits to citizenship without previous declaration of intention.

Topics.—Definition of citizen.—Definition of political rights.—Two meanings of the term "citizen," as generally used.—Conflict of laws supposed to affect a naturalized citizen.—Attitude of the United States shown in treaties.—Process of naturalization.—Privileges and immunities of a naturalized citizen.—Citizen in a State and in the United States.—Special cases, under law, of citizenship and naturalization.

References.—Ford, *American Citizen's Manual*, Part II, 39–44; Hinsdale, *American Government*, 215–217; Miller, *Lectures*, 275, 276.

61. Bankruptcy.—At the time of the formation of the Constitution the general subject of bankruptcy in English law embraced both bankruptcy and insolvency. The former applied to traders, the latter to persons imprisoned for debt, but asking for a discharge from prison upon surrender of all their property. Since 1840 this distinction has not pre-

vailed in the United States, except that a person who is unable to pay his debts is termed insolvent and, when his inability is declared by the proper law officer, is called a bankrupt. Congress can establish "uniform laws on the subject of bankruptcy throughout the United States"; but, when no such uniform laws exist, the States are at liberty to pass bankruptcy laws applicable within their limits. Under a general bankruptcy law, residents of the States may receive the benefit of the exemption laws of the States in which they reside. The first United States bankrupt law was in force from June 2, 1800, to December 19, 1803; the second, from February 1, 1842, to March 3, 1843; the third, from June 1, 1867, to September 1, 1878; the fourth was enacted in 1898. Under the bankrupt law a person is relieved from obligations that can be legally enforced, but there are moral obligations which still bind him. Bankrupts have sometimes assumed that escape from legal obligations released them from moral obligations, and acting under this assumption they have found society turned against them. In some countries bankrupts not only lose credit but also social position, and the only way for them to achieve social rehabilitation is to redeem their outstanding promises.

Topics.—Bankruptcy and insolvency.—General bankruptcy laws.—State laws to obtain when no general law.—Position of debtor under bankrupt law.

References.—Hinsdale, *American Government*, 217, 218; Lalor, *Cyclopædia*, i, 223.

62. Coining Money.—Congress can coin money. It can thus provide for a uniform currency for the whole country. In exercising this power to coin money the Government determines the amount and kinds of metal that shall constitute the different coins, and stamps pieces of metal with words and figures which indicate the names and weight of the several pieces. While the denomination of the coin is

fixed by the Government, its value, that is to say, its power to purchase, is fixed by the operations of the market. This is particularly true of the standard coin. A token coin, such as the half-dollar, is worth half as much as a gold dollar, although the silver in it is worth, as bullion, less than half as much as the gold in a gold dollar. The coin is worth half of a dollar because the law requires that two of these shall be exchangeable with the gold dollar. Usually the amount of the token money that may be given at any one time in the payment of a debt is limited by law. The token coin, then, differs from the standard coin in that the bullion of which it is composed is worth less than the amount indicated on the face of the coin.

Although the real value of a coin is fixed in the market, yet the Government may fix the amount of metal which it shall contain and by so doing cause its market value to vary. In dealing with foreign coins, moreover, the Government may establish the ratio which such coins shall hold to the domestic coins; that is to say, at what rate the foreign coins shall be received at the custom house or in payment for public lands.

Topics.—The right to coin money affected by the Constitution.—Part played by Government in coining.—Government and foreign coins.—Value of coins.

References.—Ford, *American Citizen's Manual*, Part II, 172–184; Hart, *Actual Government*, 496; Hinsdale, *American Government*, 202–211, 218, 219; Lalor, *Cyclopædia*, i, 507.

63. Treasury Notes.—In the time of the Civil War, when the Government was greatly in need of money to meet its enormous expenses, Congress authorized the use of treasury notes in the payment of debts contracted by the Government. These notes were issued in great numbers and constituted the bulk of the money in circulation in the United States for several years. An act was also passed by Con-

gress making these notes legal tender. Owing, perhaps, to the fact that there was no clause in the Constitution which seemed to furnish specific authority for this action, the question of its constitutionality was several times brought to the attention of the Supreme Court; and it was finally decided by that body "that the impressing upon the treasury notes of the United States the quality of being a legal tender in payment of private debts is an appropriate means, conducive and plainly adapted to the execution of the undoubted powers of Congress, consistent with the letter and spirit of the Constitution, and therefore, within the meaning of that instrument, 'necessary and proper for the carrying into execution the powers vested by this Constitution in the Government of the United States.'"

Money is said to be a legal tender when the law authorizes it to be tendered in payment of debts. In authorizing the issue of money that is to constitute a part of the lawful circulating medium of the country, Congress declares it to be lawful money and a legal tender. When paper money was issued by the Government during the Civil War, Congress declared that the "United States notes shall be lawful money, and a legal tender in payment of all debts, public and private, within the United States, except for duties on imports and interest on the public debt." Essentially the same legal declaration is made with respect to the gold and silver money of the United States. Any money that has thus been made by law a legal tender may be offered in payment of debts; and the creditor has no right to refuse it and demand another kind of money, unless it has been especially provided in a contract with him that he shall be paid in some specified kind of money or the issue of some specified date.

Topics.—Treasury notes authorized by Congress.—Question of constitutionality of the act.—Decision of the Supreme Court.—Definition of legal tender.

References.—Hart, *Actual Government*, 497–499; Hinsdale, *American Government*, 199–202; Lalor, *Cyclopædia*, i, 222 ; iii, 960.

64. Counterfeiting.—In order to render effective and exclusive the authority of the Federal Government to coin money, Congress is empowered "to provide for the punishment of counterfeiting the securities and current coin of the United States." Under this power, Congress has declared that any person, not authorized by law, who shall make or cause to be made, or shall attempt to issue or pass any coins of gold or silver, whether in the semblance of the coins of the United States or of foreign countries, shall be punished by fine not exceeding $5,000 and by imprisonment for a term not exceeding ten years. For counterfeiting the minor coins the fine shall not exceed $1,000, and the imprisonment shall not exceed three years. This prohibition applies also to the counterfeiting of paper money that has been issued by the Government.

Topics.—Definition of counterfeiting.—Prohibition by Congress.

References.—Hinsdale, *American Government*, 219, 220.

65. Post Offices and Post Roads.—Congress can "establish post offices and post roads." Any route within a State, whether on land or water, over which mails are transported under the law of Congress or by order of the Post-Office Department, is a post road. Was it intended that the power here conveyed should be limited to designating routes over which the mails should be carried? Judge Cooley has answered this question with the statement that "the power to establish post offices includes everything essential to a complete postal system under Federal control and management, and the power to protect the same by providing for the punishment, as crimes, of such acts as would tend to embarrass or defeat the purposes had in view in their establishment."[1]

[1] Cooley, *Constitutional Law*, 83.

Topics.—Describe the business of the post office.—Definition of a post road.—Extent of power of Congress in this matter.

References.—Ford, *American Citizen's Manual*, Part II, 44–48; Hinsdale, *American Government*, 221, 222; Lalor, *Cyclopœdia*, iii, 310.

66. Copyrights and Patents.—In case a person has invented a new machine for which there is a demand, or written a book that may be sold, he has created a kind of property that does not consist wholly in the materials of which the machine or the book is made. The ideas and literary form of the book are results of his labor and make it valuable. They are his property. The new application of mechanical principles and the peculiar combination of the parts of a machine—in a word, the ideas involved in the machine—give it its special value. After the machine has been made, or the book has been written and published, it may be very easily copied; and thus the inventor or the writer may be deprived of the product of his labor. In order, therefore, to enable the writer and the inventor to hold undisturbed possession of the products of their labors, Congress is empowered to secure "for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries." A copyright is obtained by sending to the Librarian of Congress the title and, within two weeks from the date of issue, two copies of the publication in question. A fee of $1 is paid for securing a copyright. A renewal is obtained in the same manner, but application must be made within six months before the expiration of the first term. To obtain a patent, application must be made to the Commissioner of Patents, in accordance with the prescribed form. This application is accompanied by a description of the invention. A fee of $15 is required on filing the application and a fee of $20 is required on the issue of the patent.

Topics.—Definition of copyright.—Compare copyright with patent.—Object of copyright and patent.—Process of securing copyright and patent.

References.—Hinsdale, *American Government*, 222–225; Lalor, *Cyclopædia*, iii, 123.

67. Courts Inferior to the Supreme Court.—Congress can establish Federal courts. It was clearly impossible for the makers of the Constitution to foresee, and provide for, every case where a Federal court might be needed sometime in the future. They were able, however, to see that one great central supreme court would always be required, and such a court they established directly by a provision of the Constitution. The language of this clause is: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." In order to carry out this plan, Congress was given the authority to establish such inferior Federal courts as in its judgment might be needed.

Though the Supreme Court was called into existence by a direct provision of the Constitution, it devolved upon Congress to fix the number of judges and to increase or diminish their number. This would render it possible for the President and Congress ultimately to make their own will prevail, if they wished to go to the disgraceful length of increasing the number of judgeships, and of filling them with partisans pledged to support the views of the President and Congress in a conflict between them and the court.

Topics.—Difference between Federal and State courts.—Why power to establish inferior Federal courts was given to Congress.

References.—Bryce, *American Commonwealth*, i, 225–236; Hart, *Actual Government*, 301–304.

68. Piracy.—Congress can "define and punish piracies and felonies committed on the high seas, and offenses against

the law of nations." Piracy is robbery or depredation on the high seas. By the term "high seas" is meant all tide-water below low-water mark. "Piracy is the same offense on sea that robbery is on land"; but it is more likely to be committed by associations than are most forms of robbery on land. Pirates may be called the brigands of the sea. Their field is usually outside of the dominion of any nation—that is to say, on the sea more than three miles from any shore. They carry the flag of no nation, and no nation protects them. They are public enemies and are amenable to the tribunals of their captors. Laws enacted by any nation to suppress them are directed against a common enemy and are in the interest of all civilized nations. Any state may proceed against pirates, although their depredations may have been confined to the vessels or commerce of other states. Robbery committed on a ship belonging to the subjects of a foreign state by a person not a citizen of the United States is a crime against such foreign state, and is not punishable in the courts of the United States.

Topics.—Definition of piracy.—Difference between piracy and robbery on land.—Usual field of pirates' operations.—Where pirates may be tried.

References.—Hinsdale, *American Government*, 225; Lalor, *Cyclopædia*, iii, 199.

69. War.—Congress can declare war. When two nations have antagonistic purposes that cannot be reconciled by peaceable negotiation, there appears to be no alternative but a resort to force. Such a resort to force may mean that an attempt has been made to reach an agreement by mutual persuasion or compromise, and that the efforts have been fruitless; or it may mean an act of pure aggression, in which no attempt has been made to harmonize conflicting purposes. In either case there is no common superior who can make a decision by which the two nations must abide.

There appears, therefore, nothing else for them to do but to settle their differences, as their savage ancestors settled theirs, by a conflict in which each party gathers up all the force that seems to be necessary to crush his antagonist.

The power to declare when war shall be used to this end by the United States has been committed to Congress; but war may exist between the United States and another nation prior to any congressional declaration on the matter. In 1812 Congress enacted "that war be and the same is hereby declared to exist between the United Kingdom of Great Britain and Ireland and the dependencies thereof and the United States of America and their Territories." In 1846 it was affirmed in the preamble of an act of Congress that "by the act of the Republic of Mexico a state of war exists between that government and the United States." On the twenty-fourth of April, 1898, it was enacted "that war be and the same is hereby declared to exist, and that war has existed since the twenty-first day of April between the United States and Spain." In none of these cases did the declaration of Congress precede the beginning of hostilities.

After the Treaty of Paris, by which the Philippine Islands passed under the sovereignty of the United States, a part of the inhabitants rose in rebellion against the authority of the United States. For the purpose of suppressing this rebellion large bodies of troops were transported to those islands. This was done under the orders of the President without any special authorization or declaration by Congress. The insurgents or persons in rebellion were never recognized as belligerents by any other nation, and Congress never declared war against them. Furthermore, in 1900, when the American minister at Pekin and other American citizens in China were the objects of a general attack in the Boxer outbreak, several regiments were sent to China with a view of protecting the lives of Americans and American interests. These coöperated with the allied forces sent by

Japan, Germany, France, Russia, and England; but the participation of the United States in this undertaking was simply by direction of the President. Congress made no declaration in the matter and issued no special authorization for carrying on the war. It would thus appear that although Congress is empowered to declare war, most of the wars carried on by the United States have been begun without a congressional declaration.

Topics.—Meaning of declaration of war.—By whom made.—War without declaration.—Instances.—Rebellion in the Philippine Islands.—Expedition to Pekin, 1900.

References.—Ford, *American Citizen's Manual*, Part II, 21–29; Hart, *Actual Government*, 474–477; Hinsdale, *American Government*, 226.

70. Letters of Marque.—Congress can grant letters of marque. It sometimes happens that members of one nation suffer an injury at the hands of members of another nation, for which they are not able to obtain redress either from the persons inflicting the injury or from the government claiming jurisdiction over such persons. In cases like this, or in war where persons concerned have no private grievances, governments have, in some instances, authorized private persons to go upon the high seas to take the persons or property of the enemy or of the members of that nation from which the injury has proceeded. The authorization in such a case is conveyed in a commission called a letter of marque. These undertakings are known as privateering and have been recognized by international law. Before some of the nations had established permanent public navies, this practice was useful, as private war on land was useful before a national army or a public police force was organized. With the growth of more reasonable international relations there has been manifested a disposition to abolish privateering, so that the power of Congress to grant letters of marque is a

power of diminishing importance. The first article of the Declaration of Paris, 1856, affirms that "privateering is and remains abolished." Most of the leading civilized nations have accepted this declaration; that is, they will not engage in privateering. The signatory powers were Great Britain, France, Russia, Austria, Sardinia, Prussia, and Turkey. Spain, Mexico, and the United States agreed in rejecting the rule abandoning the practice of privateering.[1]

Topics.—Definition of letter of marque.—Privateering.—Declaration of Paris, 1856, on privateering.

References.—Lalor, *Cyclopædia*, iii, 361.

71. The Army.—Congress can raise and support armies. The fact that armies are organized under the principle of absolutism has led modern liberal states to be jealous of military authority. This jealousy, has, moreover, been strengthened by the history, in other nations, of military encroachments on the civil authority. The existing Government has not the military weakness of the Government under the Articles of Confederation, and it keeps the army subject to legislative authority. No appropriation of money for the support of the army shall be for a term longer than two years.

[1] The plenipotentiaries who signed the Treaty of Paris, 1856, assembled in congress at Paris "adopted the following solemn declaration":

1. Privateering is and remains abolished; 2. The neutral flag covers enemy's goods, with the exception of contraband of war; 3. Neutral goods, with the exception of contraband of war, are not liable to capture under enemy's flag; 4. Blockades, in order to be binding, must be effective—that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.

The Congress of Paris, here referred to, was a meeting of representatives of the powers that had been involved in the Crimean War, and the Treaty of Paris, signed March 30, 1856, closed that war. About two weeks after signing the treaty the members of the congress, seeing the need of rules to control the shipping of goods in time of war, signed this declaration, which has become a part of international law.

In case, therefore, the Executive should wish to maintain a larger army than should seem desirable to Congress, this body might make its will effective by withholding funds needful for the army's support.

By an act of Congress approved April 22, 1898, the military forces of the United States are declared to consist of all able-bodied men between eighteen and forty-five years of age. This means that all citizens embraced in this description are liable to military service in case they are needed to defend the interests of the nation or to carry out the purposes of the Government. The regular army, however, is only a very small part of this number. After the Civil War it was reduced to 27,000 men. In 1898 it was increased to 60,000; and in 1899, to 65,000, with a temporary volunteer force of 35,000. In 1901 it was provided that the number of enlisted men should not exceed 100,000; and that there should be one lieutenant general, six major generals, fifteen brigadier generals, and such other officers as are demanded for the proper organization of the army.[1]

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[1] The officers of the army and navy are appointed by the President. These officers are as follows:

Army	*Navy*
General	Admiral
Lieutenant general	Vice admiral
Major general	Rear admiral
Brigadier general	
Colonel	Captain
Lieutenant colonel	Commander
Major	Lieutenant commander
Captain	Lieutenant
First lieutenant	Lieutenant, junior grade
Second lieutenant	Ensign

The office of general, superior to that of major general, was created for Washington by Congress, March 3, 1799. After his death it remained vacant until 1802, when it was abolished. It was revived for General Grant in 1866, and three years later it was conferred on W. T. Sherman. It was allowed to lapse on Sherman's retirement in 1883, but was revived again for Sheridan. On Sheridan's death it was

Topics.—Organization of armies.—Appropriations for support of army.—Military forces of the United States.—Regular army.—Officers of the army.

References.—Hart, *Actual Government*, 462–466; Hinsdale, *American Government*, 227; Lalor, *Cyclopedia*, iii, 1016.

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again dropped. At present the highest officer in the army is known as the chief of staff.

In the United States navy the office of admiral was created in 1866 for Farragut. At the death of Admiral Porter in 1891, the titles of vice admiral and admiral were abolished. The title of admiral was, however, recreated in 1899 and conferred upon George Dewey.

Instruction preparatory to entrance into the army as second lieutenant or into the navy as ensign is furnished by the Military Academy at West Point or the Naval Academy at Annapolis. The body of cadets at the Military Academy consists of one from each congressional district, one from each Territory, one from the District of Columbia, and ten from the United States at large. The cadets are appointed by the President, and when appointed must be between seventeen and twenty-two years of age. With the exception of the ten at large, they must reside in the State, Territory, or district for which they are severally appointed. The cadets are paid by the Federal Government, but "no cadet shall receive more than at the rate of $540 a year." They are organized into four companies, and each company is commanded by an officer of the army. After a cadet has completed the required studies of the classes he may be commissioned as a second lieutenant. In case of vacancies the President may appoint persons not graduates of the Military Academy to be second lieutenants.

At the Naval Academy the students are called naval cadets. The number is one for each member or delegate of the House of Representatives, one for the District of Columbia, and ten appointed at large. The naval cadets at large and the one from the District of Columbia are appointed by the President. Of the others, each member and delegate of the House of Representatives nominates, in writing, one resident of his district; and if no nomination is made for any given district, in case of vacancy, within a specified time, the Secretary of the Navy makes the appointment without such nomination. The academic course for naval cadets is six years, and the cadets at the time of their admission must be between the ages of fourteen and eighteen years. After graduation they may be appointed to the lower official grades in the navy or marine corps.

72. The Militia.—Congress can call the militia into active service. The militia is a military force organized by the several States, and consists of such persons in the States as are liable to military duty. The officers are appointed by the States. The force is primarily subject to the order of the governor of the State in which it is organized, and may be used in suppressing local riots or other disturbances of the public peace when, in the opinion of the proper authorities, the regularly constituted police is unable to perform the task. It may, however, be brought into the service of the Federal Government; for Congress may "provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions." In making provision for calling forth the militia, Congress may confer this power upon the President. This makes him the exclusive judge of the need of making the call and renders any one refusing to obey the call, when made, liable to punishment under military law. Congress may also "provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress." Although the militia is organized by the States, and the officers are appointed by the same authority, yet, having been called into the service of the United States, this branch of the army is subject to the orders of the President as commander in chief, as well as to the orders of any officer of the regular army ranking the officers of the militia who may be placed in command. By these provisions it is made clear that the Federal Government is supreme in everything relating to war. This fact is further emphasized by the constitutional provision that no State shall enter into any treaty, alliance, or confederation, or grant letters of marque and reprisal; and that no State, without the

consent of Congress, shall keep troops or ships of war in time of peace, or enter into any agreement or compact with another State or with a foreign power; or engage in war unless actually invaded, or in such imminent danger as will not admit of delay. This prohibition concerning troops does not refer to the militia, but to a standing army. It is expected that the States will enroll, officer, equip, and instruct the militia. This reference to treaties and alliances does not mean that Congress may authorize a State to form treaties or alliances with foreign States; for such treaties and alliances are strictly prohibited by the Constitution. The agreements or compacts here referred to are such as may be made for certain temporary purposes, and are distinct from the permanent alliances or confederations that are involved in international relations.

In connection with other provisions relating to the militia may be read that contained in the second amendment to the Constitution, which declares that "a well-regulated militia being necessary to a free State, the right of the people to keep and bear arms shall not be infringed." This amendment appears to have its antecedent in the English Bill of Rights. The fundamental purpose of the original English declaration was to secure to the people the right to be armed and prepared to resist the encroachments of a more or less antagonistic crown and standing army. As a means of popular defense against the established authorities of the central Government, and particularly against possible acts of injustice by a standing army, it recommended itself to the jealous inhabitants of the United States. What is intended in the last clause of the amendment is a general right of the people to keep arms and to become proficient in their use, in order that if the occasion should demand it they might become effective members of a popular army to defend themselves against invasion, internal disturbance, or unlawful oppression, and to make unnecessary such a standing

army as might be dangerous to the liberties and the democratic spirit of the nation.

The militia has been called into the service of the national Government three times: (1) at the time of the insurrection known as the "Whisky Rebellion"; (2) in the War of 1812; (3) in the Civil War. In the war with Mexico and in the war with Spain the soldiers that were added to the regular army from the several States were received as volunteers, although many of them had previously belonged to the militia.

Topics.—Definition of the militia.—Appointment of the officers.—For what purposes used.—In the service of the United States.—Federal supremacy in military affairs.—Right to bear arms.

References.—Hart, *Actual Government*, 472–474; Hinsdale, *American Government*, 229, 230.

73. The District of Columbia.—Congress can make laws for the District of Columbia. In 1788 Maryland ceded to the Federal Government a tract of land lying east of the Potomac, and in 1789 Virginia ceded another tract west of the Potomac. These two tracts made up the District of Columbia, ten miles square. The latter part was retroceded to Virginia in 1846, leaving the area of the District as it is at present, about sixty-four square miles. In the District of Columbia the government is carried on under Congress. This government is in marked contrast with that existing generally in the States. With the exception of a brief period, the District has always been governed directly by Congress; and thus the people have been subject to a legislative body which they had no part in creating. The exception refers to the period between 1871 and 1874, when there existed a territorial government, consisting of a governor, a secretary, a council or upper legislative house, a board of health, and a board of public works, appointed by the President. There was, moreover, a house of delegates

elected by the people. This territorial form of government was set aside in 1874, and the District was placed under a board of three commissioners, two appointed by the President, and the third, an officer of the corps of engineers of the army, detailed by the President. The subordinate municipal officers of the District as at present organized are appointed by the commissioners. The revenues are derived from two sources, one-half from the Federal treasury, appropriated by Congress, and the other half from a tax on the assessable property of the District.

Topics.—Laws for the District of Columbia.—The land of the District.—The government.—Period of territorial form.—Revenues of the District.

References.—Hinsdale, *American Government*, 230–232; Hart, *Actual Government*, 124, 334, 355–356; Bryce, *American Commonwealth*, ii, 646.

74. Treason.—Congress can provide punishment for treason. The Constitution has specifically defined treason as consisting in levying war against the nation or in adhering to its enemies, giving them aid and comfort. Merely planning to make war or conspiring to overthrow the Government is not treason. War must be actually undertaken. When such war has been begun, then all persons who take any part in it, however small, are guilty of treason. The testimony of two witnesses or a confession in open court is necessary for conviction of this offense. Congress is authorized to declare the punishment for treason; but in granting this authority the Constitution places certain limitations on it: it provides that "no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted." By this limitation on the power of Congress to fix punishment for treason, the continuance of the cruel punishments that had attended conviction of treason in England were made impossible.

Topics.—Definition of treason.—Witnesses necessary for conviction of treason.—Constitutional limitation of punishment for treason.

References.—Lalor, *Cyclopædia*, iii, 932; Cooley, *Constitutional Law*, 91, 287, 288; Hart, *Actual Government*, 578.

75. Implied Powers.—Besides being authorized to do those things that are particularly specified, Congress can do all those other things that are necessary to enable it to exercise completely and efficiently the powers that are *expressly* conferred upon it. The powers of Congress that are not particularly specified are called the *implied* powers. The reason for the existence of the implied powers is found in necessity, in the impossibility of making the Constitution "contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution."[1] A constitution is not a detailed code, but is a general law which sketches in outline the government created by it, and makes clear the important objects to be attained. By specifying an object to be reached, it is presumed to authorize whatever means are necessary to attain this object. In other words, the Government is expected to carry out the orders involved in the Constitution, and to execute the powers that have been specifically granted to it; and "Congress may make any law, not by the Constitution expressly or impliedly prohibited, which it should deem conducive to the execution of any express power."[2]

The general theory of implied powers may be readily accepted; but difficulty arises when it is proposed to make a specific application of the theory. The political party actually controlling the Government usually takes a liberal view of its authority, while the party that is not in power is

[1] McCulloch *vs.* State of Maryland, 4 Wheaton, 316.
[2] Cooley, *Constitutional Law*, 93.

disposed to hold to the strict reading of the Constitution. The party that insists on construing the Constitution strictly is called the "Strict Construction" party. There have been instances where Congress has done things that would not seem to be authorized by a strict adherence to the letter of the Constitution. It was thought that the laying of an unlimited embargo on commerce in 1807 was such an instance.[1] The purchase of Louisiana in 1803 and its subsequent admission into the Union were said to be acts not warranted by any express grant of power to Congress.[2]

The existence of implied powers leaves Congress to decide, in the first instance, whether it may or may not take a certain proposed action under these powers. Like an individual person, Congress is likely to resolve all reasonable doubts in its own favor. This means that without external check Congress will be disposed to extend its power more and more—in other words, to expand the Federal as opposed to State authority. There is, however, a certain check on congressional discretion. It remains for the Supreme Court to decide whether any particular law passed by Congress is warranted under the rule of implied powers. But the Supreme Court is a part of the Federal Government; and in accordance with the principle under which Congress is presumed to act, it may be expected in the long run to give the Federal instead of the State government the benefit of such reasonable doubts as may arise with respect to the limits of Federal and State authority. And what might be expected under this rule has been realized in the history of the Government of the United States and in the history of all similar governments that have reached the Federal stage: they have continued to magnify the central Government as compared with the provincial or State governments; they have strengthened and tightened the bonds of union.

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[1] See § 59. [2] See § 89: 1.

Topics.—Definition of implied powers.—Reason for implied powers.—Constitutional provision on this subject.—Attitude of party in control of Government toward implied powers.—"Strict construction party."

References.—Hinsdale, *American Government*, 232–235; Lalor, *Cyclopædia*, i, 612.

76. Alien and Sedition Laws.—Among the noteworthy instances of exercise of implied powers are the Alien and Sedition Laws. The Alien Law was approved June 25, 1798, and authorized the President to order out of the country such aliens as he should deem dangerous to the peace and safety of the United States, or should have reasonable grounds to suspect to be concerned in any treasonable or secret machinations against the Government. For disobedience to this order it imposed severe penalties.

The Sedition Law was approved July 14, 1798. It made it a crime for any persons unlawfully to combine with intent to oppose any measures of the Government of the United States, or to impede the operation of any law of the United States. It fixed as punishment for this crime a fine not exceeding $5,000, and imprisonment for from six months to five years, binding to good behavior at the discretion of the court. Any person who should intimidate an officer of the Government and thus prevent him from fulfilling the duties of his position was subject to the same punishment; also anyone advising or attempting to create a riot, unlawful assembly, or combination. Any person who should print or publish any false, scandalous, and malicious writings against the Government of the United States was subjected to a fine not exceeding $2,000, and imprisonment not exceeding two years. The same punishment was to be imposed upon anyone who should encourage the hostile designs of any foreign nation against the United States.

The practical carrying out of this very liberal view of the

implied powers was not allowed to pass without a vigorous protest. This protest found expression in the Kentucky and Virginia resolutions.

Topics.—Alien law, June 25, 1798.—Sedition law, July 14, 1798.—Intimidating an officer.—Encouraging hostile designs against the United States.—Protest in Kentucky and Virginia resolutions.

References.—Lalor, *Cyclopædia*, i, 56–58; Cooley, *Constitutional Law*, 94–97.

77. The Kentucky and Virginia Resolutions.—The passage of the Alien and Sedition laws persuaded the advocates of strict construction that the rights and powers of the States were in danger of undue limitation by the action of the Federal party in seeking to magnify the implied powers of Congress. To set aside this supposed danger and to define the relative powers of the State and the Federal governments the Kentucky and Virginia resolutions were passed. The Kentucky resolutions declared that the Constitution was a compact between the States and the Government founded by it; and that "this Government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among parties having no common judge, each party has an equal right to judge for itself as well of infractions as of the mode and measure of redress." The legislature of Virginia, in passing the Virginia resolutions, asserted its firm attachment to the Constitution, and announced a determination to support it. At the same time it viewed "the powers of the Federal Government as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no further valid than they are authorized by the grants enumerated in that compact; and that,

in case of a deliberate, palpable, and dangerous exercise of other powers not granted by the said compact, the States who are the parties thereto have the right and are in duty bound to interpose for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them."[1] These second resolutions declared that the several States were sovereign and independent, and that they might nullify any acts of the Federal Government that were done in violation of their avowed position.

In spite of this protest, persistently asserted and emphasized by the arguments of a political party for seventy years, the more liberal view of the powers of Congress has prevailed.

Topics.—Occasion of the Kentucky and Virginia resolutions.—Declaration of Kentucky resolutions.—Statement of Virginia resolutions.—What is meant by "nullification" in this connection.

References.—Lalor, *Cyclopædia*, ii, 672.

78. Restrictions on the Powers of Congress.—Any power reserved to the States is in the nature of a restriction on the powers of Congress. The long discussion in the United States as to the rights of the States and the powers of the Federal Government is evidence of the difficulty of drawing a practical line of separation between the sphere of the States and the sphere of the Federal Government. There are, however, certain clearly defined restrictions on the powers of Congress; and some of these apply generally to legislative bodies. No legislative body, for instance, created by an act of the sovereign, may delegate to another department of the Government or to another body its power to make laws. It appears, however, to be within the competence of the constitution-making body either to act di-

[1] Elliott's *Debates*, iv, 528

rectly with respect to any given subject, or to leave it to be dealt with through an act by the legislative body. Although Congress may not delegate its legislative power to the President, it may authorize him to determine in what cases a particular law shall apply. In suspending the writ of *habeas corpus* in the Civil War, Congress "empowered the President to exercise his judgment and supersede the writ in particular cases, as he might deem the public interest to require."[1]

No sovereign can bind itself for the future, nor can a legislature in any way limit its successor. This means that any law which a legislature may pass is subject to repeal by any succeeding legislature. All laws are, therefore, repealable.

The ninth section of the first article of the Constitution contains a number of specific restrictions on the powers of Congress:

1. That Congress shall not prohibit the importation of slaves prior to the year 1808.

2. That the privilege of the writ of *habeas corpus*[2] shall not be suspended unless, when in cases of rebellion or invasion, the public safety may require it.[3]

3. That no bill of attainder or *ex post facto* law[4] shall be passed.

4. That no capitation or other direct tax[5] shall be laid except under certain specified conditions.

5. That no tax or duty shall be laid on articles exported from any State.

6. That no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to, or from, one State be obliged to enter, clear, or pay duties in another.

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[1] Cooley, *Constitutional Law*, 98.
[2] See p. 218.
[3] See § 128.
[4] See § 126.
[5] See § 51.

7. That no money shall be drawn from the treasury, but in consequence of appropriations made by law.

8. That no title of nobility shall be granted by the United States.

These and other restrictions on Federal power, contained in the amendments to the Constitution, partake of the nature of a bill of rights or of constitutional guarantees for the protection of individual citizens or the States.

Topics.—Character of restrictions on power of Congress.—No legislative power delegated.—Specific restrictions in ninth section of first article of the Constitution.

References.—Hinsdale, *American Government*, 236–242; Willoughby, *Rights and Duties*, 198–200.

FOR ADVANCED STUDY

The Debts of the Confederation, and State Debts.—MacDonald, *Select Documents*, 46–58; Hunt, *James Madison*, 179, 200; Lodge, *Hamilton*, 85–96, 117–129; Gordy, *Political Parties*, i, 118–128; McMaster, *United States*, i, 567–579; Schouler, *United States*, i, 130–142; Hildreth, *United States*, iv, 152–174, 206–216; H. von Holst, *United States*, i, 83–89; Morse, *Jefferson*, 97–106.

The Constitutional Doctrine of Implied Powers.—Jefferson, *Writings*, v, 284–289; Hamilton, *Works*, iii, 249–251; iv, 104–138; Madison, *Letters*, i, 528, 546; Hunt, *James Madison*, 201–204; MacDonald, *Select Documents*, 76–98; Lalor, *Cyclopædia*, i, 199, 200; Hildreth, *United States*, iv, 262–267; Marshall, *Writings*, 288–291; Magruder, *John Marshall*, 172–179.

Citizenship.—Story, *Commentaries*, §§ 1103, 1104, 1693–1695, 1805, 1806, 1928–1975; *Political Science Quarterly*, 1: 199–205; 5: 104–123; H. von Holst, *Constitutional Law*, § 83; Boutwell, *Constitution*, Chaps. X, XXII, XXIII, XLIV, LIII–LVIII, LXIII, LXIV.

The Alien and Sedition Acts.—MacDonald, *Select Documents*, 137–148; Gordy, *Political Parties*, i, Chap. XIX; McMaster, *United States*, ii, 389–403, 417–419, 424–427; Schouler, *United States*, i, 392–403, 420, 421; Lalor, *Cyclopædia*, i, 56–58.

The Monroe Doctrine.—Hart, *Contemporaries*, iii, 479, 480, 494–498, 499–501; Gilman, *James Monroe*, 156–174; Wharton, *Digest*, i, § 57; Gordy, *Political Parties*, ii, 488–496; Burgess, *Middle Period*, 122–128; Schouler, *United States*, iii, 277–291, 292, 293.

The Doctrine that "To the Victor Belong the Spoils."—Lalor, *Cyclopædia*, iii, 565–569; Morse, *Jefferson*, 215–225; Benton, *Thirty Years' View*, i, 159–162; Roosevelt, *Benton*, 79–85; Schurz, *Clay*, i, 332–336; Sumner, *Jackson*, 145–149; Wilson, *Division*, 26, 27, 30–34; Schouler, *United States*, iii, 175, 453, 455–462.

The Various Forms of United States Money.—Secretary of the Treasury, *Annual Report;* Register of the Treasury, *Annual Report;* Sumner, *American Currency;* Hart, *Contemporaries*, iv, §§ 168–172; Knox, *United States Notes;* White, *Money and Banking.*

Congress and the Income Tax.—*North American Review*, 160, 589–606; *Forum*, 19: 48–56, 513–530, 158.

War Taxes.—Dewey, *Financial History*, 299–306; Bolles, *Financial History*, 1861–85, 159–196; Howe, *United States under Internal Revenue System*, 50–81; *Review of Reviews*, xvi, 167–174.

Implied Powers.—Channing and Hart, *Guide*, 333, 334.

The Interstate Commerce Commission.—Prentice and Egan, *Commerce Clause of the Federal Constitution;* Johnson, *Railway Transportation; Reports* of the Commission.

CHAPTER VI

THE ORGANIZATION, POWERS, AND DUTIES OF THE FEDERAL EXECUTIVE.

79. The Form of the Executive.—Many of the political ills which the people of the colonies had suffered or feared, they had attributed to the king. This made them hesitate to place any one man at the head of the new Government. Jealousy, moreover, made many persons reluctant to give power to any one man. In the Philadelphia convention of 1787, Mr. Randolph affirmed that a single executive was opposed by the people; that it would never have their confidence; and that a single chief executive would commonly come from the central part of the Union, and, consequently, the remote parts would be in a position of disadvantage.

On the other side a number of reasons were presented against an executive composed of a number of persons: (1) Such an arrangement would lead to constant struggles for local advantage. (2) The executive power would be weakened by its divisions and animosities. (3) The States all had single executives. (4) A plural executive would be ill adapted to controlling the militia, the army, and the navy. (5) The animosities arising from an executive composed of several persons would not only interrupt the public administration, but also diffuse the spirit of animosity through the other branches of the Government, through the States, and through the people at large.

It is probable that the presence of Washington, who was

generally regarded as eminently fitted to fill the office, was in itself also a reason for vesting the executive authority in one man. In the Constitutional Convention it was thus settled early, by a vote of eight States to three, that this should be the form of the executive.

Topics.—Opposition to single chief executive.—Reasons against collegiate executive.—Probable influence of Washington's presence. —Vote in Constitutional Convention.

References.—Bryce, *American Commonwealth*, 35–39; Dawes, *How We Are Governed*, 167–170, 199; Fiske, *Civil Government*, 232; Hart, *Actual Government*, 259–261; Hinsdale, *American Government*, 248–250; Lalor, *Cyclopædia*, ii, 131; Miller, *Lectures*, 148.

80. Election of the President.—In the Constitutional Convention three methods of electing the President were considered: (1) By Congress; (2) by a direct vote of the qualified voters of the whole country; (3) by a college of electors. The delegates feared that the first method would make the President dependent on Congress, and that the second would arouse too much popular excitement. They finally agreed to cause the President to be elected by a body of presidential electors. The electors were to be appointed by the several States in such manner as the legislature in each State might direct. Under the exercise of this discretion, different methods of choosing the electors have been followed. They have been elected "by joint ballot of the State legislature, by a concurrent vote of the two branches of the legislature, by the people of the State voting by general ticket, and by the people voting in districts." The voting by districts would be likely to give the State a divided delegation in the electoral college, while by any one of the other modes all the electors of any given State might be expected to belong to the dominant political party.

The Constitution provides that the number of electors from any State shall be "equal to the whole number of

senators and representatives to which the State may be entitled in the Congress; but no senator, or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector." In carrying out this provision one elector is taken from each congressional district and two from the State at large. On a day previously fixed, "the electors shall meet in their respective States and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed."

In case equal numbers of electors vote for two candidates, or if no candidate receives a majority of the whole number of electors appointed, "then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose, immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the

right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President." [1]

It was originally intended that the electors should exercise complete freedom in voting. The person having the greatest number of votes should be the President, provided the number of votes received by him was more than one-half of the whole number of electors. The person receiving the next greatest number below that given for the President, should be Vice-President. This plan appeared to the makers of the Constitution to be eminently satisfactory. They thought the electors would be the best citizens of the several States, and that they would elect for President the person approved by their independent judgment. The votes of the individual electors were counted for the person designated. Under this system the President might belong to one political party and the Vice-President to another party. In such a case the death of the President would cause the transfer of the administration from one party to another, or from the majority to the minority. This was not a prospect to be regarded with favor by either party; for the prize won in a presidential election was too important for the victorious party to be held dependent on the uncertainty of a single human life. This plan was set aside in practice very early.

Under the present method of election, party conventions within the State nominate electors, and the national conventions nominate candidates for the presidency. The electors, under this system, simply furnish a method of counting the vote that has been cast for the persons named by the national conventions of the two parties. It is counted by States, each State standing for a number equal to the

[1] Amendment XII.

number of its electors, or equal to the number of its senators and members of the House of Representatives. The election is held on the Tuesday after the first Monday of November preceding the March when the President is inaugurated. The party in any given State that casts the largest number of votes at the election, however numerous the minority vote, has all the electors of the State counted for its presidential candidate. Within each State the popular vote determines for which candidate the whole number of electors allotted to the State shall be counted. In 1884 the Democratic party in New York had a majority of but 1,100 in a total vote of over 1,100,000; and the thirty-six electoral votes of the State were cast for Mr. Cleveland. In Pennsylvania, the thirty Republican electors were elected by a vote of 473,000 against a vote of 392,000 for the Democratic electors.

Under the earlier method of election, Washington became President twice by the unanimous vote of the electoral college; and John Adams, having, after the vote for President, the greatest number of votes of the electors, became Vice-President. At the third election, John Adams, of one political party, became President, and Thomas Jefferson, of the other party, became Vice-President. At the fourth election Jefferson and Burr, of the same political party, had the same number of votes, and the choice was made by the House of Representatives. The difficulties attending this method of electing a President led to the twelfth amendment of the Constitution, adopted in 1804. Under this amendment the election has been referred to the House of Representatives. This was in 1824, when Andrew Jackson, John Quincy Adams, William H. Crawford, and Henry Clay were candidates. Henry Clay's name could not be considered by the House of Representatives, since he received fewer electoral votes than any of the others; and under the twelfth amendment the election by that body must be from the three persons having the highest numbers of votes. Mr.

Adams received the votes of thirteen of the twenty-four States and was elected.

Since the presidential candidates are named by the national conventions before the voting for electors begins, the voters practically cast their votes for one or another candidate. By reason of the method of counting involved in the present system, it sometimes happens that the majority of the electors may be on the side of one party, while the majority of the popular vote may be with the other party. This result naturally provokes criticism. There would, perhaps, be some basis for such criticism if it had been designed, in organizing the Government, that the popular majority should dominate in all cases. But this does not appear to have been the purpose of the framers of the Constitution. Since each State, however large or however small, sends two senators to the Federal Congress, it may happen that the majority in the Senate will represent only a minority of the voters in the nation. But this is not a departure from the plan of the Government as drawn by its founders; and the same may be said of the fact that the majority in the electoral college is not of the same party as the popular majority.

In the presidential election of 1876, the persons authorized to count the electoral votes were placed in a perplexing position by receiving from several of the States double returns. The embarrassment of the situation was increased by the fact that the election depended upon the votes of these States. The laws relating to elections did not furnish a means of settling this case; and with a Republican Senate and a Democratic House of Representatives, the problem was full of difficulties. At this point Congress intervened. It passed an act, approved January 29, 1877, which created an electoral commission. The act itself was made applicable only to this case. Under this act the two houses, in joint meeting, were to open the electoral votes and to enter upon

the journals the votes to which no objections should be made. No single return from any State, to which objection might be made, should be rejected except by the concurrent vote of both houses. The double or multiple returns were disposed of by the second section of the act already mentioned:

"That if more than one return, or paper purporting to be a return, from a State shall have been received by the President of the Senate, purporting to be the certificates of electoral votes given at the last preceding election for President and Vice-President in such State (unless they shall be duplicates of the same return), all such returns and papers shall be opened by him in the presence of the two houses, when met as aforesaid, and read by the tellers, and all such papers and returns shall thereupon be submitted to the judgment and decision, as to which is the true and lawful electoral vote of such State, of a commission."

They were referred to a commission to decide which was the true and lawful electoral vote of the States from which two sets of returns or certificates had been received. This commission was composed of fifteen members. Four of the associate justices of the Supreme Court were named in the law which provided for the commission, and these chose Joseph P. Bradley, a Republican, as the fifth associate justice. Besides the associate justices, there were five senators and five members of the House of Representatives, who were selected respectively by the two houses. From each of the States of Florida, Louisiana, Oregon, and South Carolina, there were returns of electoral votes in favor of Rutherford B. Hayes, the Republican candidate for President, and other returns of votes in favor of Samuel J. Tilden, the Democratic candidate. By a vote of eight to seven, a strict party vote, the commission sustained the validity of the votes for Mr. Hayes in each case, and he became President.

Topics.—Method of electing President proposed.—Method adopted.—Number of electors.—Meeting of electors.—Procedure when electors fail to elect.—Oath of office.—Compare old and new method.—Elections under the old method.—Elections by House of Representatives.—Majority of electors and popular majority.—The electoral commission and its work.

References.—Bryce, *American Commonwealth*, ii, 168–193; Dawes, *How We Are Governed*, 171–184; Fiske, *Civil Government*, 232–240; Hart, *Practical Essays*, 58–81; Hart, *Actual Government*, 261–269; Hinsdale, *American Government*, 251–264; Lalor, *Cyclopædia*, ii, 50–60; Wilson, *Congressional Government*, 242–256.

81. Qualifications and Compensation.—The President of the United States must be "a natural born citizen" of the United States, at least thirty-five years of age, and have "been fourteen years a resident within the United States." The Constitution provides that he "shall receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them." In case a President serves two terms in succession he may receive an increased compensation for the second term, provided the increase is made before the expiration of the first term, even though he may have been reëlected before the increase is made. The amount of this compensation is fixed by Congress; and, at present, it is $75,000 a year, payable monthly. The President has, moreover, the use of the executive mansion, its "furniture, and all other effects belonging to the United States." He is authorized to employ in his official household one private secretary, one assistant private secretary, two executive clerks, one steward, and one messenger.

Topics.—Birth and age.—Compensation.—As to increase of compensation.—Members of official household and their salaries.

References.—Dawes, *How We Are Governed*, 170, 171; 199–202; Fiske, *Civil Government*, 241; Hinsdale, *American Government*, 265–269; Miller, *Lectures*, 153, 154.

82. The Presidential Term.—The President holds his office during a term of four years. At first the Constitutional Convention was in favor of a term of seven years, without the privilege of reëlection. The longer period was supported by the idea that more frequent elections would be undesirable on account of the social and economic disturbances that would be caused by them; that they would be "hazardous to the public tranquillity." The popular agitation that was greatly feared has, in fact, offered the most effective means for keeping the whole body of the people interested and instructed in the questions that vitally concern the welfare of the Republic. In a monarchy or an aristocracy popular tranquillity is highly desirable, for it leaves the monarch or the limited class of rulers free to carry out the proper designs of the government. But in a democratic republic it is not enough that the masses of the people should remain tranquil and acquiesce in what is done by those temporarily in authority; they must have knowledge of public affairs, and this knowledge will be found in the people only so long as it shall be possible to maintain popular interest in governmental questions; and for this purpose nothing has hitherto been discovered more effective than the discussions which attend a presidential election.

Topics.—Term of office.—Arguments in favor of a longer term.—Effect of popular agitation attending presidential election.—Knowledge of public affairs.

References.—Dawes, *How We Are Governed*, 173–186; Miller, *Lectures*, 151, 152; Hinsdale, *American Government*, 250.

83. The Vice-President.—The Vice-President is elected in the same manner as the President, except that if no

person has a majority of the whole number of electors appointed, then from the highest two numbers on the list the Senate shall choose the Vice-President. It is to be noted that the election is from the two persons having the highest numbers of votes, instead of from three persons, as in the case of electing the President; and that the choice is made by the Senate instead of by the House of Representatives. A quorum of the Senate, for this purpose, consists of two-thirds of the whole number of senators. "But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States."

"In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President; and such officer shall act accordingly, until the disability be removed, or a President shall be elected." Under this authorization Congress provided, in 1792, that after the Vice-President the succession should go to the President *pro tempore* of the Senate; and, in case there was no such president, to the Speaker of the House of Representatives. This law of succession was modified by the act of 1886, in which it was provided that after the Vice-President the succession should go to members of the Cabinet in the following order: The Secretary of State, the Secretary of the Treasury, the Secretary of War, the Attorney General, the Postmaster General, the Secretary of the Navy, the Secretary of the Interior. If the Vice-President succeeds to the presidency, he serves as President for the remainder of the current presidential term; but if a member of the Cabinet becomes President under this law, he will act only till a new President can be elected. No person can become President under this law

unless he has the constitutional qualifications for the presidency.

Topics.—Election of Vice-President.—Part taken by the Senate.—Succession of the Vice-President.—Succession to the presidency after the Vice-President.—No succession without constitutional qualifications.

References.—Dawes, *How We Are Governed*, 179–183; Hinsdale, *American Government*, 257, 258.

84. Executive Power.—It was easier for the Constitutional Convention to determine that the executive power should be vested in one man, than to determine how much power he should have. Hamilton proposed a strong Executive, who should hold office for life, or until removed by impeachment. This view, however, was not generally accepted. The more democratic and conservative members of the convention found a model in the governors of the States. They believed that what was needed was a governor of the Union; an officer of great independence, but holding his office for a definite term. This term was fixed by the Constitution at four years. In providing for the Executive, the makers of the Constitution hoped to create an officer sufficiently dignified to represent worthily the whole Union, as the governors had represented the States; sufficiently independent and powerful to prevent the legislative bodies from absorbing too much power, and at the same time so limited as not to threaten the liberties of the people. Later experience indicates that the President now wields more power than the majority of the convention expected to confer upon him.

The powers of the President relate to three classes of affairs—foreign affairs, internal affairs, and war:

1. In determining the foreign relations of the Government the President makes treaties with foreign powers; and these treaties, when confirmed by a vote of two-thirds

of the senators present, become authoritative and a part of the law of the land. He appoints ambassadors, ministers, consuls, and other officers representing the Government in its relation to foreign nations. In these cases confirmation by the Senate is required, for which, however, only a majority vote is needed.

2. In internal affairs the President appoints the Judges of the Supreme Court and all other officers of the United States authorized by law, whose appointments are not otherwise provided for by the Constitution. The power to appoint to office includes the power to remove from office.

The President may reprieve or pardon persons convicted of offenses against the United States except in cases of conviction under impeachment. In reprieving a criminal the President suspends temporarily a sentence that has already been pronounced by a lawfully constituted court, while in pardoning he relieves the criminal completely from the sentence. He may, on extraordinary occasions, convene both houses of Congress, or either of them; "and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper." But the President has never exercised this power.

3. Important among the President's powers is that which he exercises as "Commander in Chief of the Army and Navy of the United States and of the militia of the several States when called into the actual service of the United States." In times of peace there is little evidence that the President's war power is especially significant; but in case of war the vast power that is vested in him as commander in chief of the army and navy becomes clearly manifest. Through the Secretary of War and the Secretary of the Navy his orders are issued, which direct the movements of those two powerful arms of the Government. If adequate

funds have been appropriated for military or naval purposes, the President may carry on a war for subduing an insurrection or repelling invasion without calling upon Congress. The war for suppressing the insurrection in the Philippines in the years 1899, 1900, and 1901, illustrates the great power and independence of the President under certain circumstances in conducting warlike operations.[1]

Topics.—Hamilton's proposal as to power of Executive.—Model adopted for presidential office.—Three classes of affairs under presidential power.—Extent of the President's military power.

References.—Bryce, *American Commonwealth*, Chap. V; Dawes, *How We Are Governed*, 187–191; Fiske, *Civil Government*, 242; Hart, *Actual Government*, 269; Lalor, *Cyclopædia*, iii, 1064; Miller, *Lectures*, 154–156.

85. Making Treaties.—In making treaties the negotiations are undertaken by the President through either the Secretary of State or a specially appointed agent. The special agent may be the minister or ambassador residing at the capitol of the nation with whom the treaty is to be made, or any other person named as a commissioner for this purpose. It may happen that the Secretary of State or the commissioner will find it impossible to negotiate a treaty that will be satisfactory to the President. In this case the negotiations will come to an end without practical results. If the President approves of the treaty formed by the negotiators, he will submit it to the Senate. The Senate will then consider it and either confirm it or amend it. If it is amended by the Senate, it must be returned to the negotiators for further consideration and approval by the representatives of the foreign power. The final step in making a treaty is the formal exchange of ratifications through which the parties to the treaty mutually declare that the forms prescribed by law for making a treaty have been

[1] See p. 129, and § 150.

observed, and that the treaty itself has become binding with respect to both parties.

Topics.—The process of making a treaty.—Relation of the Senate to treaty making.—Final act: formal exchange of ratifications.

References.—Bryce, *American Commonwealth*, 49, Chap. XI; Hart, *Actual Government*, 439–446; Lalor, *Cyclopædia*, iii, 944; Miller, *Lectures*, 167, 168.

86. Relation of the House of Representatives to Treaty-Making.—A treaty made in the manner prescribed is valid and has the force of law, although the House of Representatives may not have been consulted concerning it. Such a treaty may impose upon the Government an obligation to pay a certain amount of money; but under the Constitution "no money shall be drawn from the treasury but in consequence of appropriations made by law." It thus appears that the House of Representatives may be called upon to vote to appropriate money for fulfilling the terms of a treaty which it had no voice in making. The treaty has, however, been made strictly in accordance with law, and the obligation of the Government under it is complete; but the House of Representatives is legally competent to refuse to make the stipulated appropriation, and thus, acting within the sphere of its unquestioned authority, may place the Government in the position of having directly violated a treaty voluntarily made by it. Still, the House of Representatives is under a moral obligation not to prevent the lawfully constituted authorities from carrying out the treaty; but it cannot be compelled to act in accordance with this obligation. "The treaty when thus ratified is obligatory upon the contracting states, independently of the auxiliary legislative measures which may be necessary on the part of either in order to carry it into complete effect."[1] "Neither

[1] Wheaton, *International Law*, London, 1904, § 266.

government has anything to do with the auxiliary legislative measures necessary, on the part of the other state, to give effect to the treaty. The nation is responsible to the government of the other nation for its non-execution, whether the failure to fulfill it proceeds from the omission of one or other departments of its government to perform its duty in respect to it."[1]

In later times the House has claimed the right to participate in making any treaty that changes the customs duties, on the ground that the Constitution confers the power to regulate commerce with foreign nations upon Congress and not upon the President and the Senate. This claim is, however, not generally admitted.

Topics.—What constitutes a valid treaty?—The case where treaty calls for payment by the United States.—Position of House of Representatives in treaty-making.

References.—Hinsdale, *American Government*, 271–273; Miller, *Lectures*, 168; Wheaton, *International Law*, see Index under *Treaties*.

87. Treaty-Making Power Limited by the Constitution.—The Constitution is made directly by the legal sovereign—that is, by the collection of bodies that have power to amend the Constitution. These bodies are the two houses of Congress and the legislatures of the States, or conventions in the States. Treaties are made by the President and the Senate, and Federal statutes are made by the President and the Congress. The relation between the makers of the Constitution and the makers of treaties is the relation between principal and agent. The agent has no power to nullify or set aside the orders or decrees of his principal. Thus treaties and Federal statutes are inferior to, and limited by, the Constitution of the United States; and in so far as these treaties or statutes are contrary to

[1] Lawrence's Wheaton, *International Law*, p. 459, note.

the provisions of the Constitution they are null and void. Treaties and Federal statutes are, however, the law of the land in the sense that they are valid throughout the Union, and that their provisions cannot be nullified by State laws or State constitutions. A treaty and a Federal statute have like authority; but a treaty of later date than a statute nullifies all contrary provisions of the statute, while, on the other hand, a statute of later date than a treaty nullifies all contrary provisions of the treaty. Referring to the relation of a treaty to the Constitution and the relation of a treaty to an act of Congress, the Supreme Court, in the Cherokee Tobacco case, makes the following statement: "It need hardly be said that a treaty cannot change the Constitution or be held valid if it be in violation of that instrument. This results from the nature and fundamental principles of our Government. The effect of treaties and acts of Congress, when in conflict, is not settled by the Constitution. But the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty."

Topics.—Relation of treaties and Federal statutes to the Constitution.—Their relation to State laws and State constitutions.—Relation of treaty to Federal statute.

References.—Hinsdale, *American Government*, 270–273; Hart, *Actual Government*, 439–444.

88. Jay's Treaty of 1794 and the House of Representatives.—At the beginning of Washington's administration he found British troops occupying the northern frontier of the Union, Spain making encroachments from the south, and an agent of France in the United States attempting to fit out privateers to be used by France against England. To form a treaty that might remove these evils and avert a war, John Jay, the Chief Justice of the United States, was sent

to London as a special envoy. He negotiated a treaty which was signed in 1794. It provided for the withdrawal of the British garrisons from the northwestern posts, and for the adjustment of disputes respecting the boundaries. It provided for a joint commission to fix the amount of payments to be made by the United States to Great Britain on behalf of British creditors; and for another similar commission to determine the amount of payments to be made by Great Britain to the United States on account of illegal captures. It made provision for the extradition of persons charged with crime, and for regulating commercial intercourse. "It contained no disavowal of the arbitrary principles which Great Britain had asserted, no provisions that free ships should make free goods; and it granted to Great Britain the privileges for her vessels of war and prizes which France enjoyed under the treaty of 1778." The treaty was generally regarded as defective, and a great popular outcry was raised against it. Washington saw its defects, but he believed that no better treaty could be obtained then. The House of Representatives was called upon to appropriate money to meet the expenses involved in carrying out the treaty, and it proposed to take advantage of this situation to enforce its claim to have a hand in making treaties. It asked for the instructions under which Jay had acted. Washington refused to accede to this request, although the instructions had already been published. He wished to emphasize the fact that the assent of the House was not necessary to the validity of a treaty. The House of Representatives finally yielded, and in no subsequent instance has it failed to make the appropriation required to fulfill the conditions of a treaty.

Topics.—Object of Jay's treaty of 1794.—Terms of the treaty.—Popular view of it.—Washington's attitude toward it.—Course proposed by House of Representatives.—Significance of the final action.

References.—Lalor, *Cyclopædia*, ii, 634; iii, 945; Hinsdale, *American Government*, 272; McLaughlin, *History of the American Nation*, 250.

89. Treaties Annexing Territory.—Following are the important treaties, signed, rejected, or withdrawn, involving the annexation of territory to the United States:

1. In April, 1803, Louisiana was by treaty purchased from France. Thomas Jefferson, who was then President, held that in making this treaty the Executive had "done an act beyond the Constitution," but that the Legislature should ratify it and pay the sum promised "and throw themselves on their country for doing for them, unauthorized, what we know they would have done for themselves had they been in a situation to do it." To remedy the supposed unconstitutionality of the purchase, Jefferson suggested an amendment to the Constitution, providing that the inhabitants of Louisiana should stand "as to their rights and obligations on the same footing with other citizens of the United States in analogous situations." In the House of Representatives the vote to carry the treaty into effect stood ninety to twenty-five, the minority holding that the annexation was unconstitutional. Louisiana was, however, accepted without an amendment, and has since been considered, without question, a part of the territory of the United States.

2. By treaty signed February 22, 1819, Spain ceded Florida to the United States. In consideration of this cession the United States agreed to pay claims against Spain amounting to $5,000,000. Spain withheld her ratification of this treaty till 1821, asking as price of such ratification that the United States should refuse to recognize the revolted Spanish-American colonies.

3. In 1844, Calhoun, who was then Secretary of State under President Tyler, drew up the form of a treaty of

annexation with Texas. This was submitted to the Senate and rejected by a vote of sixteen to thirty-five. The next year a joint resolution was passed by the House of Representatives, which affirmed that "Congress doth consent that the territory properly included within, and rightly belonging to, the Republic of Texas may be erected into a new State, to be called the State of Texas." This resolution was amended by additions permitting four new States to be formed out of this territory besides the State of Texas, and authorizing the President to make a treaty of annexation with Texas. In its amended form the resolution was passed by the Senate and accepted by the House, but a treaty with Texas was never made. The annexation was effected by a joint resolution of Congress.

4. The Treaty of Guadalupe-Hidalgo, signed February 2, 1848, and ratified by the Senate, March 10 of the same year, closed the Mexican War and ceded to the United States the territory of New Mexico and California. This cession was made under the agreement that the United States should pay $15,000,000 and assume $3,250,000 in claims of American citizens against Mexico.

5. The Gadsden Treaty, made in 1853, was a treaty of purchase. Under it the United States paid $10,000,000 for a certain territory south of the Gila River, embracing 45,535 square miles.

6. The treaty with Russia, by which Alaska was ceded to the United States, was made March 30, 1867, and was ratified by the Senate on June 20 of the same year. It added to the territory of the United States a region 577,390 square miles in extent. At that time it was thought to be valuable chiefly for its fur-bearing animals, but since then it has been found to contain large quantities of gold.

7. In 1893 a treaty was agreed upon between the Government of the United States and the new Hawaiian Government that had been established as a consequence of the

revolution in which the Queen was deposed. It was sent to the Senate for ratification; but before action was taken on it President Harrison's term of office expired. The treaty was subsequently withdrawn from the Senate by President Cleveland. The breaking out of the war between the United States and Spain in 1898 strengthened the party in favor of annexation, and in July Congress passed a joint resolution by which the Hawaiian Islands and their dependencies were "annexed as part of the territory of the United States."

8. By the Treaty of Paris, closing the Spanish-American War, made December 10, 1898, Spain ceded to the United States the Island of Porto Rico, and other islands then under Spanish sovereignty in the West Indies, and the Island of Guam in the Marianas or Ladrones. By the same treaty Spain ceded also the Philippine Islands, and the United States paid Spain the sum of $20,000,000. This treaty was approved by the Senate February 6, 1899, and ratifications were exchanged in Washington, April 11 of the same year.

Topics.—Louisiana purchase.—Jefferson's position.—Attitude of the House of Representatives.—Cession of Florida.—Annexation of Texas.—Treaty of Guadaloupe Hidalgo.—Gadsden Treaty.—Purchase of Alaska.—Annexation of Hawaii.—Treaty of Paris, 1898.

References.—Hart, *Actual Government*, 342–346; Lalor, *Cyclopædia*, i, 93–99.

90. The President's Messages to Congress.—The President has need to address the Senate in connection with the making of treaties with foreign powers. He has, moreover, need to address the whole Congress in connection with making laws. Holding the power of a limited veto over proposed laws, he thereby possesses some of the functions of a legislator and is thus under the necessity of communicating to Congress his views respecting bills passed by that body. It was presumed by the makers of the Constitution

that it would be advisable for him, as the political leader of the nation, to have opportunity to present to Congress a general statement concerning the condition of the country, an outline of his policy, and such recommendations as to legislation as might seem to him expedient. In the Constitution it was therefore provided that, "he shall, from time to time, give to Congress information of the state of the Union and recommend to their consideration such measures as he shall judge necessary and expedient." Under this constitutional provision the President sends a general message to Congress at the beginning of each annual session in December, and special messages as the business of the administration may require. During the administrations of Washington and Adams the annual messages of the Presidents were delivered in person. This procedure was like that of the king's "speech from the throne" to the British Parliament. In delivering the main body of his message the President addressed Congress as, "Fellow-citizens of the Senate and House of Representatives." The part of the message relating to revenue and appropriations was addressed to the "Gentlemen of the House of Representatives," and the conclusion, to the "Gentlemen of the Senate and House of Representatives." The practice of the British Parliament was further followed in the composition of an answer to the President's address by the two houses of Congress. Even while this practice was in vogue with respect to the annual message, special messages were usually sent in writing. The practice of delivering the annual message in person was abandoned in Jefferson's administration, and his substitution of the written for the spoken message furnished a precedent that has been followed by all later Presidents.

Topics.—President's need to address Congress.—General message.—First general messages delivered in person.—Early special messages.

References.—Dawes, *How We Are Governed*, 188; Fiske, *Civil Government*, 243; Lalor, *Cyclopædia*, ii, 828; Miller, *Lectures*, 168–170.

91. Special Messages.—The President's special messages to Congress embrace all communications sent by him in transacting the regular business of the administration. Whenever an appointment is made that requires confirmation by the Senate, this appointment is brought to the attention of the Senate by a special message from the President. Whenever a bill passed by the two houses is presented to him for his signature and he refuses to sign it, he communicates this fact and the reason for his decision by a special message. The greater part of the special messages addressed to Congress are sent to communicate the President's veto of bills passed by that body, and such messages deal simply with the considerations that have moved the President to disapprove the bill in question. A special message is the means by which the President, participating in legislation, makes his opinion effective either to defeat a bill or to cause it to be carefully reconsidered.

Topics.—Nature of the special message.—How a bill is vetoed.

References.—Dawes, *How We Are Governed*, 188; Hinsdale, *American Government*, 281; Miller, *Lectures*, 170.

92. Offices and Appointments.—Some of the offices of the Federal Government were created directly by the makers of the Constitution, while others had their origin in laws passed by Congress. The Constitution provides directly for senators and representatives, for presidential electors, for the President and the Vice-President, and for a Supreme Court. The larger part of the offices of the Federal Government were created by Congress, such as the inferior courts, heads of the several departments, and the large number of subordinate offices through which the Federal administration is conducted. The power to create offices of the latter

class, like all the other powers of Congress, was derived from the Constitution. While the President possesses the power to fill offices by appointment, he has no power to create offices. His appointments in the case of the more important officers are subject to confirmation by the Senate. This is true of judges of the Supreme Court, the heads of departments, consuls, ministers, and ambassadors; but many of the inferior officers the President may appoint without reference to the Senate. Besides the officers appointed by the President, there are many inferior officers who are appointed by courts of law or by the heads of departments. The Constitution authorizes Congress to "vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments"; but it does not enable us to make a clear distinction between inferior officers and those persons in the public service who are designated "employees," such as ordinary laborers in the navy yards or arsenals.

Topics.—Origin of the Federal offices.—Method of appointing Federal officers.—Part taken by the Senate.—Appointment of inferior officers.

References.—Bryce, *American Commonwealth*, i, 61–66; 109, 110, 394; Dawes, *How We Are Governed*, 191; Hart, *Actual Government*, 270–272; Miller, *Lectures*, 156–160.

93. Attitude of the Senate toward Appointments by the President.—The framers of the Constitution thought that a bill would receive more just and thorough criticism if required to pass through two legislative bodies instead of one. They thought also that candidates for appointment to important offices would be more carefully considered if their qualifications had to be reviewed not only by the President but also by the Senate. This was the original theory on which the President was required to submit the more important appointments to the Senate. While this

plan generally met with approval, a fear was at the same time expressed that the Senate would usurp executive functions. John Adams said: "Senators will be solicited by candidates for office. A senator of great influence will be ambitious of increasing his influence and will use it to get out his enemies and get in his friends." This prediction has, in a measure, become true. Senators have sometimes demanded that appointments from the State which they represent should be made in accordance with their wishes; and sometimes the Senate has rejected persons nominated, simply because they were personally not acceptable to the senators from the State in which they lived. This action was taken by the Senate with respect to Washington's nomination of a naval officer for the port of Savannah. This was the first nomination rejected; and the ground of rejection was not that the candidate was unfit for the office, but that he was not personally acceptable to the senators from Georgia. In following this practice, known as the courtesy of the Senate, the Senate is not required to give its reasons for refusal. "This method of dealing with the subject has obviously defeated the purpose of the Constitution, which was to secure the disinterested judgment of the Senate as a body upon the merits of the candidate. All that is secured under this rule of courtesy is the favor of the local senators. By giving them directly the control of all the high Federal appointments for their State, and as a consequence substantially the control of the subordinates of their appointees, the senators have become more and more the dictators of State politics."[1] The deference shown the senators in this matter has doubtless been more or less influential in making them considerate of the President's wishes in the appointment of the members of the Cabinet, ambassadors, and other high officers, so that only in very

[1] Dorman B. Eaton, in Lalor's *Cyclopædia*, i, 581.

rare and exceptional cases is the confirmation of the appointment of such an officer refused.

Topics.—Reason for requiring confirmation by the Senate.—Senatorial demands respecting appointments.—Senatorial courtesy.—Appointment of ministers and members of the Cabinet.

References.—Hinsdale, *American Government*, 275; Lalor, *Cyclopædia*, i, 580; Willoughby, *Rights and Duties*, 212.

94. Removals from Office.—The Constitution contains no provision concerning removals from office except under impeachment, and in cases of impeachment the judgment "shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States." The general decision of the Supreme Court covering this subject affirms that "in the absence of all constitutional provision or statutory regulation, it would seem to be a sound and necessary rule to consider the power of removal as incident to the power of appointment." Some of the early statesmen thought, with Hamilton, that a principle like this should be made generally applicable; and that if the consent of the Senate was necessary for appointment, it should be necessary for removal. Others, including Madison, held that, although an officer had been appointed "by and with the advice and consent of the Senate," he might, nevertheless, be removed by the President alone. The question was decided by Congress in 1789, in favor of the latter view, which has since prevailed in practice. An attempt was made, however, in 1867, to establish a different policy, when Congress by a two-thirds vote passed the Tenure-of-office Bill over the President's veto. This bill provided that the consent of the Senate should be required for the removal of officers appointed by the President. Two years later part of this law was repealed. The rest of it continued in force until 1885, when this part also was repealed

Topics.—Judgment in case of impeachment.—Power of removal.—Question of consent of the Senate to removal.—Tenure-of-office bill; reason for its passage.

References.—Dawes, *How We Are Governed*, 196; Hart, *Actual Government*, 285–288; Hinsdale, *American Government*, 276–278; Lalor, *Cyclopædia*, iii, 565, 895; Miller, *Lectures*, 160–162.

95. "Spoils System" and Merit System.—The theory of republican government involves the idea that the voters in selecting persons to fill offices will select the persons who are best fitted to perform the duties connected with the office in question. It involves also the supposition that when officers are empowered to appoint other officers the same end will be kept in view; but in practice it is found that the person who has the power of appointment is sometimes tempted to forget the public good and to appoint his personal friends, or persons who may help him to obtain the objects of his political ambition, or persons who have worked for the success of the party. In cases where the persons appointed would displace other persons, the power of appointment has sometimes been used, and may be used, to punish political enemies by causing their removal from office. Some or all of these motives have been effective in the politics of the United States; and under their influence a practice known as the "Spoils System" grew up. The fundamental idea of this system is that the persons appointed to office shall be such as have rendered efficient service in making the party victorious and such as may be expected to work for the continued supremacy of the party. Inasmuch as the person appointed knew that he would be removed from office if his party should be defeated, it was expected that he would be moved by this consideration to work for its success.

There were few removals by the early Presidents, but Jackson made ten times as many as had been made in all of

the ten preceding presidential terms. The "Spoils System" was named in the United States Senate when Senator Marcy, of New York, in 1832, was discussing the practice as upheld by the politicians of the day, particularly by the New York politicians. "When they are contending for victory," he said, "they avow the intention of enjoying the fruits of it. If they are defeated, they expect to retire from office; if they are successful, they claim, as a matter of right, the advantages of success. They see nothing wrong in the rule that to the victor belong the spoils of the enemy."

The practice of removing from office adherents of other parties and of making appointments for party purposes became, in the course of time, so general that the purity of the political life of the Republic was seriously threatened. Seeing that the power of appointment and removal was being used for personal and party ends, and that the public welfare and the efficiency of the Government were suffering serious deterioration, a large part of the people determined, if possible, to check the evil, and made a persistent demand for a reform of the civil service. This reform has been so far carried out that a Merit System, as opposed to the "Spoils System," has been established. The Merit System provides that persons shall be appointed inferior officers and employees only after a proper examination, and that these appointments shall be made with sole reference to the fitness of the persons appointed to perform the duties devolving upon them. It provides, moreover, that even in cases where the administration is changed from one party to the other, these officers or employees shall hold their offices or employment during good behavior.

Topics.—The theory of republican government with respect to officers.—The practice.—Description of "Spoils System."—Jackson's removals.—Origin of the name "Spoils System."—Reason for demanding reform in the civil service.—Definition of the Merit System.—Its fundamental provision.

References.—Bryce, *American Commonwealth*, i, 63, 394, 500, 642; ii, 50, 120, 131–142, 166, 241, 589, 846; Hinsdale, *American Government*, 277; Lalor, *Cyclopædia*, iii, 782; Macy, *Our Government*, 134–138.

96. Civil Service Act.—The demand for the regulation and improvement of the civil service resulted in an act for the purpose, approved January 16, 1883. This act authorized the President to appoint, with the advice and consent of the Senate, the United States Civil Service Commission, to be composed of three persons, not more than two of whom should be adherents of the same party. The duties of the commission under this act are, among other things, to aid the President in making rules for carrying the civil-service law into effect; to hold competitive examinations for testing the fitness of applicants for public service, then or afterward to be classified; and to make such arrangements that offices, places, and employments should be filled by selections, according to grade, from among those graded highest as a result of such competitive examination. Exercising his constitutional powers, and authorized by Section 1753 of the Revised Statutes and by the Civil Service Act of 1883, the President, from time to time, makes and promulgates rules governing in detail the action of the Civil Service Commission.

Section 1753 of the Revised Statutes is as follows: "The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service."

Topics.—Substance of the Civil Service Act.—Duties of the Civil Service Commission.—Rules governing the Civil Service Commission.—Section 1753 of the Revised Statutes.

References.—Bryce, *American Commonwealth*, i, 646; ii, 27, 59, 139, 161, 609, 847; Ford, *American Citizen's Manual*, Part I, 116–144; Hart, *Practical Essays*, 81–98; Hart, *Actual Government*, 288–295; Hinsdale, *American Government*, 277, 278; Lalor, *Cyclopædia*, i, 478; Macy, *Our Government*, 139.

97. Diplomatic Agents.—The President is directly authorized by the Constitution to appoint, among other officers, "ambassadors, other public ministers, and consuls." Ambassadors and diplomatic envoys or ministers and *chargés d'affaires* are agents sent by one sovereign state to another sovereign state "to represent one state at the capital of another, or to negotiate and treat with that other on national affairs." They may be sent on temporary or on extraordinary missions, or to become residents, during the pleasure of the appointing power, at the capital of the state to which they are sent. The right to send and to receive diplomatic agents is an incident of sovereignty. A state, however, is competent to refuse at any time to receive a diplomatic agent from another state; but if this is done without reasonable grounds, the act may be considered as a rupture of friendly relations. A diplomatic agent within the boundaries of a foreign nation enjoys certain privileges and immunities not accorded to the ordinary member of his nation. He "cannot be tried for a criminal offense by the courts of the state to which he is accredited, and cannot, as a rule, be arrested"; and this immunity is enjoyed also by the couriers of the legation.[1] Children born to a diplomatic agent within the limits of a foreign country do not become subjects of that country, but retain the nationality of the father; but any real property held by a diplomatic agent

[1] Hall, *International Law*, 172.

within the limits of the country to whose government he is accredited is under the jurisdiction of that government. "His personal effects and the property belonging to him as representative of his sovereign are not subject to taxation. Otherwise he enjoys no exemption from taxes or duties as of right. By courtesy, however, most, if not all, nations permit the entry, free of duty, of goods intended for his private use." [1]

Topics.—Who are diplomatic agents.—Objects of their mission.—Reception or rejection.—Privileges and immunities.

References.—Dawes, *How We Are Governed*, 209–211; Fiske, *Civil Government*, 246; Hinsdale, *American Government*, 279; Hart, *Actual Government*, 433–436; Lalor, *Cyclopædia*, i, 30–33; Hall, *International Law*, 172–185.

98. Consuls.—Consuls are persons appointed by governmental authorities to reside in a foreign country, in order to watch over the interests of citizens of the country they represent who may be visiting or engaged in business in those countries, and to protect, facilitate, and extend commerce between the nation to which they are sent and the nation sending them. In the performance of their duties "they receive the protests and reports of captains of vessels of their nation with reference to injuries sustained at sea; they legalize acts of judicial or other functionaries by their seal for use within their own country; they authenticate births and deaths; they administer the property of subjects of their state dying in the country where they reside; they send home shipwrecked and unemployed sailors and other destitute persons; they arbitrate on differences which are voluntarily brought before them by their fellow countrymen, especially in matters relating to commerce, and to disputes which have taken place on board ship; they exercise disciplinary jurisdiction, though not, of course, to the

[1] Hall, *International Law*, 184.

exclusion of the local jurisdiction, over the crews of vessels of the state in the employment of which they are; they see that the laws are properly administered with reference to its subjects, and communicate with their government if injustice is done; they collect information for it upon commercial, economical, and political matters." [1]

Consular officers are divided into four classes of different grades; namely, consuls general, consuls, vice consuls, and consular agents. A consular officer is not necessarily a citizen of the nation he represents. He may be a citizen or a subject of the country in which his duties are performed or of a third country. When a consul is appointed, his commission or patent is communicated to the government of the country in which he is to reside; but he may not begin to perform his duties until he has received permission from that government. The order giving this permission is called an *exequatur*, and may be revoked by the government that issued it.

Diplomatic duties are sometimes imposed upon consuls. In such cases they are accredited, like other diplomatic agents, near the proper governmental authorities of the nations to which they are sent; and their consular character, under these conditions, is subordinated to their superior diplomatic character. While charged with diplomatic duties they enjoy whatever privileges or immunities attach to diplomatic agents of the rank to which they are assigned.

In some of the non-Christian countries, in which resident foreigners are exempt from the native law, European and American consuls exercise extraordinary powers. Their position is usually determined by treaties between their states and the states to which they are sent. They act as judges and hold courts at their consulates. Their judicial authority covers all civil and criminal matters in which

[1] Hall, *International Law*, 316, 317.

their countrymen are concerned. The principal countries in which foreign consuls exercise these extraordinary powers are Turkey, Siam, and China. Japan was formerly included in this list; but her progress and adoption of Western institutions led to the formation in 1894, of treaties with the United States and other countries, through which the jurisdiction of the consular courts in Japan came to an end in 1899. In the other countries mentioned the practice is still to try offenses by natives against foreigners in the local courts; but offenses by foreigners against natives are tried in the consular court of the country to which the offending foreigner belongs. If the case is between two foreigners, it is tried in the court of the defendant's consul; that is to say, the person who is accused has the right to be tried before the court of his own consul.

Topics.—Definition of a consul.—Statement of his duties.—Four classes of consular officers.—Consul not necessarily a citizen of the country he represents.—An *exequatur*.—Consuls performing diplomatic duties.—Extraordinary powers of consuls in semicivilized countries.

References.—Hall, *International Law*, see Index under *Consuls;* Fiske, *Civil Government*, 246; Lalor, *Cyclopædia*, i, 613.

99. The Executive Departments.—The Constitution provides for a separation of legislative, executive, and judicial powers; but the distribution of executive functions among different departments was made by Congress. The makers of the Constitution, however, presumed that such departments would be established; for they provided, through the Constitution, that the President "may require the opinion in writing of the principal officer of each of the executive departments upon any subject relating to the duties of their respective offices." In the Constitution the only other reference to the departments is contained in the clause which affirms that "the Congress may by law vest the ap-

pointment of such inferior officers as they may think proper in the President alone, in the courts of law, or in the heads of departments." There are now nine executive departments:

1. Department of State.
2. Department of the Treasury.
3. Department of War.
4. Department of Justice.
5. Post Office Department.
6. Department of the Navy.
7. Department of the Interior.
8. Department of Agriculture.
9. Department of Commerce and Labor.

The heads of seven of these departments are called secretaries. The head of the Post Office Department is called the Postmaster-General, and the head of the Department of Justice is the Attorney-General. The heads of the several departments constitute the President's Cabinet or private council. They are his immediate advisers with reference to executive affairs, and through them he exercises the authority conferred upon him by the Constitution. Unlike the members of the English Cabinet they have no vote in the national Legislature. They are prevented from being members of Congress by the constitutional provision that "no person holding any office under the United States shall be a member of either house during his continuance in office." They are appointed by the President with the consent of the Senate; but as these officers hold a somewhat intimate personal relation to the President and, in a measure, act for the President, the Senate seldom, if ever, refuses its approval.

Topics.—Constitutional separation of powers.—Creation of executive departments.—Language of Constitution respecting departments.—Enumeration of executive departments.—Titles of

heads of departments.—The Cabinet.—Comparison with English cabinet.

References.—Dawes, *How We Are Governed*, 204–206; Fiske, *Civil Government*, 244; Hinsdale, *American Government*, 284; Hart, *Actual Government*, 277–279; Wilson, *Congressional Government*, 262–293.

100. Department of State.—Under the Articles of Confederation the Congress created a Department of Foreign Affairs, which was the immediate antecedent of the existing Department of State. Its chief officer was called "The Secretary to the United States of America for the Department of Foreign Affairs." The functions of the Secretary of Foreign Affairs were defined in an act passed by Congress before the adoption of the Constitution. After the adoption of the Constitution Congress established a department under the same designation. The act establishing it was approved July 27, 1789. By an act passed about six weeks later, September 15, 1789, the name of the department was changed from the "Department of Foreign Affairs" to the "Department of State." The duties of the head of this department were outlined by the first section of the act creating it. They were "such duties as shall from time to time be enjoined on or intrusted to him by the President of the United States, agreeable to the Constitution, relative to correspondences, commissions, or instructions to or with public ministers or consuls from the United States, or to negotiations with public ministers from foreign states or princes, or to memorials or other applications from foreign public ministers or other foreigners, or to such other matters respecting foreign affairs as the President of the United States shall assign to the said department." Besides the head of the department, the law of July 27 provided also for a chief clerk, who, in case the principal officer should be removed by the President, or in any other case of vacancy,

should, during such vacancy, have the charge and custody of all records and papers appertaining to the department.

The Department of State, the first established and the first in rank, is the channel through which pass all communications between the Government of the United States and foreign governments, even though these communications issue from the President. The Secretary of State, the head of this department, is, according to official etiquette, the only officer who may communicate with the official representatives of foreign powers, residing in the United States, respecting public affairs. He conducts all correspondence with the official representatives of the United States accredited to foreign governments and all correspondence of the President with the governors of States. He either negotiates treaties or has charge of all treaty negotiations. He is the custodian of the originals of all laws passed by Congress. He issues passports to American citizens intending to travel in foreign countries. The work of the Department of State is distributed among several bureaus: First, the Diplomatic Bureau; second, the Consular Bureau; third, the Bureau of Indexes and Archives; fourth, the Bureau of Accounts; fifth, the Bureau of Rolls and Library; sixth, the Bureau of Appointments; seventh, the Bureau of Citizenship; eighth, the Bureau of Trade Relations.

Topics.—Antecedent of Department of State.—Its chief officer under Articles of Confederation.—Duties of the head of the department.—Bureaus of the department.

References.—Dawes, *How We Are Governed*, 206–214; Fiske, *Civil Government*, 245; Hinsdale, *American Government*, 284; Lalor, *Cyclopædia*, iii, 787; Macy, *Our Government*, 141.

101. **Department of the Treasury.**—The Department of the Treasury was established by an act of Congress, approved September 2, 1789. The head of the department is called the Secretary of the Treasury. The act establishing the department provided for a Comptroller, an Auditor, a

Treasurer, a Register, and an Assistant to the Secretary of the Treasury, in addition to the head of the department. The Secretary of the Treasury prepares plans for the management of the revenue and the support of the public credit; reports estimates of the public revenue and expenditures; superintends the collection of the revenue; prescribes the form of keeping and stating public accounts and making returns; grants warrants, under legal limitations, for money to be issued from the treasury; makes reports to either house of Congress respecting all matters referred to him by the Senate or House of Representatives or appertaining to his office. The other officers of the department and their duties are as follows:

1. Six Auditors: each receives and audits a certain part of the accounts of the general Government.

2. Comptroller of the Treasury: construes the law relating to appropriations and methods of rendering and stating accounts.

3. Treasurer: keeps United States moneys and disburses the same upon warrants drawn by the Secretary of the Treasury, countersigned by either Comptroller and recorded by the Register.

4. Register: keeps all accounts of the receipts and expenditures of all public money and of all debts due to or from the United States.

5. Chief of the Bureau of Engraving and Printing: produces all the securities and similar work of the Government printed from engraved plates.

6. Commissioner of Internal Revenue: under direction of the Secretary of the Treasury, supervises the assessment and collection of duties and taxes, providing for internal revenue.

7. Comptroller of the Currency: supervises the national banks and enforces all laws relating to the issue and regulation of the national currency, which is secured by United States bonds.

8. Surgeon-General of Public Health and Marine Hospital Service: enforces regulations for the prevention and spread of contagious diseases; supervises the quarantine service of the United States and the marine hospitals.

9. Director of the Mint: controls all mints for the manufacture of coin and all assay offices for the stamping of bars authorized by law.

10. Chief of the Secret Service: charged with the detection of counterfeiting as well as with the general detective work of the Government.

11. Supervising Architect: superintends the construction and repair of public buildings.

Topics.—Establishment of the Department of the Treasury—Work of the Secretary of the Treasury.—Bureaus in the department.

References.—Bryce, *American Commonwealth*, i, 86, 88, 175; Dawes, *How We Are Governed*, 219–224; Fiske, *Civil Government*, 247; Lalor, *Cyclopædia*, iii, 933; Hinsdale, *American Government*, 285.

102. Department of War.—The Articles of Confederation provided that no State should keep any body of forces except such as the Congress should deem to be necessary for the defense of the State, but that every State might keep up a well-regulated and disciplined militia. The central Government under the Articles of Confederation had no power to organize and equip an army of its own, but must, in case of need, rely on each of the several States to furnish its proper part of the number fixed by Congress. If the States had refused to furnish their several quotas, the plan of Congress to have an army for offensive and defensive operations would, necessarily, have failed. After the experience of the Revolutionary War, this system was generally condemned. It was found to be neither economical nor efficient.

The Constitution created a new system. While it author-

ized Congress "to raise and support armies," it prohibited the appropriation of money to that end for a term longer than two years. It did for the army what it did for the Executive and for the central Government generally: it provided a large measure of independence and centralization. Under this enlarged authority of the Federal Government Congress may not only fix the size of the army, but may also provide directly for its support and control. In the exercise of this power, Congress has at different times made large temporary additions to the Federal forces; and in this power lies the elasticity of the army, which makes it possible to adapt it to any emergency. Following are the occasions on which the army was temporarily increased to meet extraordinary demands: The War of 1812, the Mexican War, the War of the Rebellion, the war with Spain. In the War of the Rebellion the army was expanded from a body of a few thousand to contain over a million men.

In order that an army may be an effective instrument of coercion and destruction, it is organized on the principle of absolute and immediate obedience of the inferior to the superior. In this respect all armies are alike. The army of a republic is like the army of a monarchy. Both have their distinctly observed grades of inferiority and superiority, and absolutism characterizes the rule of both.

In 1785, four years before the adoption of the Constitution, the Continental Congress passed "An Ordinance for Ascertaining the Powers and Duties of the Secretary of War." After the Constitution had been adopted, Congress passed an act establishing an executive department to be called the "Department of War." The principal officer in this department is the Secretary of War, who is required to conduct the business of the department in such a manner as the President shall direct. Under the President he exercises a general control over the affairs of the army. The offices of the War Department are those of: (1) Adjutant General; (2) Inspector

General; (3) Quartermaster General; (4) Commissary General; (5) Surgeon General; (6) Paymaster General; (7) Chief of Engineers; (8) Chief of Ordnance; (9) Judge-Advocate General; (10) Chief Signal Officer; (11) Chief of Bureau of Insular Affairs; and the Board of Engineers of Rivers and Harbors. Through the Bureau of Insular Affairs, established in 1902, the Secretary of War exercises general control over the insular dependencies.

Topics.—Military power under the Articles of Confederation —The system provided by the Constitution.—Meaning of elasticity of the army.—Character of the army organization.—Duties of the Secretary of War.—Officers of the department under the Secretary of War.—Bureau of Insular Affairs.

References.—Bryce, *American Commonwealth*, i, 86; Dawes, *How We Are Governed*, 214–218; Fiske, *Civil Government*, 248; Hinsdale, *American Government*, 286; Lalor, *Cyclopædia*, iii, 1087.

103. Department of the Navy.—Prior to 1798, the naval force of the nation was unimportant, and all matters pertaining to it were committed to the Department of War. In a speech to Congress, in 1796, Washington affirmed that a naval force was indispensable to protect external commerce, and that such a force was necessary to secure respect for a neutral flag, to vindicate it from insult or aggression, and to guard it against the depredations of nations at war. A Department of the Navy was established by act of Congress, approved April 30, 1798, which provided, "That there shall be an executive department under the denomination of the Department of the Navy, the chief officer of which shall be called the Secretary of the Navy, whose duty it shall be to execute such orders as he shall receive from the President of the United States, relative to the procurement of naval stores and materials, and the construction, armament, equipment, and employment of vessels of war, as well as other matters connected with the naval

establishment of the United States." This act repealed so much of the act establishing the Department of War as vested in that department any power over the navy. But it was not until 1812 that important steps were taken to organize and maintain a permanent naval force; and then the project was opposed by those who held that agriculture was the chief interest of the country, and that it would be unwise to impose upon it a burden of taxation to maintain a navy to protect such commerce as the nation had. At that time the navy had three frigates of the first class and seven of the second class. The frigates of the first class were the *President*, the *United States* and the *Constitution*. Two of the frigates of the second class were entirely unseaworthy, and the others were in need of extensive repairs. The distinguished achievements of the navy have secured for it the generous support of the nation. The affairs of the Navy Department are distributed for the purpose of administration among several subordinate organizations: (1) the Division of Operations; (2) the Division of Personnel; (3) the Division of Material; (4) the Division of Inspections; (5) the Under Office of the Assistant Secretary.

Topics.—Creation of Department of the Navy.—Previous control of naval affairs.—Original opposition to the development of a navy.—Present attitude of the nation toward the navy.—Divisions of the department.

References.—Bryce, *American Commonwealth*, i, 68; Dawes, *How We Are Governed*, 228–232; Fiske, *Civil Government*, 248; Hinsdale, *American Government*, 287, 288; Lalor, *Cyclopædia*, ii, 993.

104. Department of Justice.—The office of Attorney-General of the United States was created by Congress in September, 1789, to embrace the various law offices of the Government, whose function it was to interpret and apply

the laws. Their officers—attorneys, marshals, reporters and clerks—became members of the Department of Justice when it was organized in 1870. They continued to interpret and apply the statutes governing the official business of the Government; but after the organization of the department they acted under the supervision of the Attorney-General. Before the creation of the department they were more or less independent, and there might readily appear a considerable diversity in their construction and application of the laws. Bringing them under one superior officer produced a desirable result in making their interpretation of the laws uniform. The Attorney-General is a member of the Cabinet. He advises the President on questions of law and exercises supervision over the district attorneys and marshals of the United States courts. He sometimes argues cases of great importance before the Supreme Court and, on rarer occasions, before subordinate United States courts; but the ordinary business of the Government before the courts is conducted by the Solicitor-General and the Assistant Attorneys-General.

Topics.—Effect of creating office of Attorney-General.—Position and duties of Attorney-General.—Conduct of business before the United States Courts.

References.—Dawes, *How We Are Governed*, 224; Lalor, *Cyclopædia*, ii, 663; Hinsdale, *American Government*, 286.

105. **Post-Office Department.**—When the United States became independent, the new Government inherited the postal system that had been established in the colonies by the English Government. Under the necessities of an increasing population and the increasing need of communication over a vastly extended territory, this system has grown to its present size. At its head stands the Postmaster-General, aided by four Assistant Postmasters-General, all of whom are appointed by the President. The business of

the department is carried on by a large number of clerks, postmasters, and letter carriers.

The Postmaster-General manages the general affairs of the department, including the foreign and domestic mail service. He can establish post offices, and has power to appoint the postmasters whose salaries are severally less than $1,000. These are postmasters of the fourth and fifth classes, and comprise about six-sevenths of the whole number, or about 60,000. The other seventh constitutes the first, second, and third classes and are appointed by the President. Fourth-class postmasters in the New England States, New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Wisconsin, and Michigan, make up 15,488 positions covered in the classified service by an executive order of November 30, 1908. This order represents the beginning of the movement which will no doubt eventually include all the fourth-class postmasters in the country.

Topics.—Antecedents of this department.—Head of the department.—Chief subordinates.—Duties of the Postmaster-General.—Appointment of postmasters.—Post office and the Civil Service act.

References.—Dawes, *How We Are Governed*, 226–228; Fiske, *Civil Government*, 248; Hinsdale, *American Government*, 287; Lalor, *Cyclopædia*, iii, 310.

106. Department of the Interior.—For more than half a century after the organization of the Federal Government, the work now performed under the direction of the Department of the Interior was distributed among the Departments of State, the Treasury, War, and the Navy. By an act approved March 3, 1849, the Department of the Interior was established. It was designated in the law, the Home Department; but the chief officer was called the Secretary of the Interior. As at present organized this department covers a large range of diverse affairs that have been trans-

ferred to it from other departments. Patents, Copyrights, the Census, and Public Documents were transferred to it from the Department of State; the Administration of Public Lands, Mines and Mining, and Judicial Accounts from the Treasury Department; Indian Affairs from the War Department; and Pensions from the War and Navy departments. In addition to these, several other important interests have been brought under the jurisdiction of the Secretary of the Interior, among which are Education, Pacific Railways, Public Surveys, the Territories, and the Reclamation Service.

Topics.—Organization of the Department of the Interior.—Previous control of the work assigned to it.—Field now occupied by it.

References.—Dawes, *How We Are Governed*, 232–242; Hinsdale, *American Government*, 288; Lalor, *Cyclopædia*, ii, 567; Willoughby, *Rights and Duties*, 224–234.

107. Department of Agriculture.—In 1862, a so-called Department of Agriculture was organized. It was, however, not a department in the sense attributed to that term when applied to the organization under the direction of the Secretary of War. Like the so-called Department of Education, in its original form it was an unassigned bureau. The object of the organization, as defined in the law creating it, was "to diffuse among the people of the United States useful information on subjects connected with agriculture in the most general and comprehensive sense of that term, and to procure, propagate, and distribute among the people new and valuable seeds and plants." The head of this bureau was called the Commissioner of Agriculture. In the course of time, in view of the increasing importance of the agricultural interests of the country, it was determined, without materially changing its functions, to raise this bureau to the dignity of an executive department and to give the chief of the bureau the title of Secretary of Agriculture. He

was at the same time made a member of the President's Cabinet. This was done in 1889.

Topics.—Organization of the Department of Agriculture.—Nature of the department at first.—Object as defined by law.—Title and position of the head of the department at first and later.

References.—Dawes, *How We Are Governed*, 243; Hinsdale, *American Government*, 288; Willoughby, *Rights and Duties*, 236.

108. Department of Commerce and Labor.—By an act approved February 14, 1903, there was established a Department of Commerce and Labor. With respect to appointment, salary, and tenure of office the secretary of this department is placed under the same regulations as the heads of the other executive departments. It was made the duty and province of this department "to foster, promote, and develop the foreign and domestic commerce, the mining, manufacturing, shipping and fishery industries, the labor interests, and the transportation facilities of the United States." Several bureaus and offices previously under the jurisdiction of the Treasury Department were transferred to the Department of Commerce and Labor. Among these may be noted the Light-House Establishment, the Steamboat Inspection Service, the Bureau of Navigation, the United States Shipping Commissioners, the National Bureau of Standards, the Coast and Geodetic Survey, the Commissioners General of Immigration and the immigration service at large. The Census Office was transferred to this department from the Department of the Interior. The jurisdiction of the Department of Commerce and Labor was extended over Labor, the Bureau of Fisheries, the Bureau of Foreign Commerce, which had previously been in the Department of State. By these changes, the Treasury Department, the Department of the Interior, and the Department of the State were relieved of work which had only a remote connection with their principal aims. Two other bureaus

were created and placed under the jurisdiction of the Department of Commerce and Labor. These were a Bureau of Manufactures and a Bureau of Corporations. The jurisdiction, supervision, and control previously possessed and exercised by the Department of the Treasury over the fur-seal, salmon, and other fisheries of Alaska, and over the immigration of aliens into the United States, belongs now to the Department of Commerce and Labor. The various functions and duties of this department and its subordinate offices and bureaus are set forth in the act of foundation, called "An Act to establish the Department of Commerce and Labor."

Topics.—Department of Commerce and Labor, established 1903.—Duty and province of this department.—Bureaus transferred from the Treasury Department.—Fisheries.

References.—Fiske, *Civil Government*, 250, 251.

109. The Cabinet.—The heads of the several departments constitute what is known as the President's Cabinet. It is appointed by him and is responsible to him alone; yet as such this body has no constitutional or legal recognition. The Constitution affirms that the President "may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices." In this lack of legal recognition the President's Cabinet is like the English Cabinet, but it is unlike it in every other respect. The members of the President's Cabinet may not be members of Congress; while the English Cabinet is, in effect, a committee of Parliament. The English Cabinet resigns if censured by a vote of Parliament, but the votes of Congress have no influence on the tenure of the American Cabinet. Action by the President on the advice of his Cabinet is held to be the President's action, and he alone is responsible. Action by the Crown on the advice of the English Cabinet is

held to be the Cabinet's action, and it alone is responsible. A member of the President's Cabinet has two conspicuous classes of duties: he is expected to know and direct the affairs of his department, and to advise the President, first, respecting all matters that lie within his administrative jurisdiction, and, second, respecting all matters of a general nature in which the executive branch of the Government is interested.

Topics.—Members of the Cabinet.—In what respects like the English Cabinet.—Relation of the President to his Cabinet.—Duties of members of the Cabinet.

References.—Bryce, *American Commonwealth*, i, 86; ii, 157; Dawes, *How We Are Governed*, 205, 243–246; Fiske, *Civil Government*, 244; Goodnow, *Comparative Administrative Law*, i, 134; Hinsdale, *American Government*, 289.

110. **Independence of the Executive.**—Under the English system the practical executive is directly responsible to the Parliament. If the Parliament persistently opposes a measure urged by the Cabinet under the leadership of the Prime Minister, the Prime Minister and his Cabinet must resign; and another Prime Minister will be named and asked to form a new Cabinet, which must conform to the opinions of the majority of the Parliament. In the United States, if the majority of the Congress opposes the President, it does not in any way affect his tenure of office or that of his Cabinet. There may be a difference of opinion between the President and Congress concerning the desirability of a proposed law. If the President is opposed to the bill, he may veto it. By this the opposition becomes open and declared. If it is not possible for the Congress to rally at least two-thirds of each house in support of the bill, this incident is closed by the veto, and the President wins in the contest. If two-thirds of each house come to the support of the vetoed bill and vote for it, the incident is

closed; and in this case the Congress wins in the contest. But whichever way the contest is closed, neither party is affected in his position. Neither resigns, and both enter upon the consideration of the next measure with the same independence as before. This independence of the Executive constitutes a check on complete party government. In England, where a Cabinet must be in complete harmony with the majority of the Commons, this check does not exist. Party government, as it is understood in Europe, does not prevail in the United States. The aim of the United States has been, through the use of various checks and limitations, to make the Government express the permanent will of the nation rather than its occasional will.

Topics.—Effect of opposition in England between Cabinet and Parliament.—Opposition of Congress to the President.—Executive independence in the United States.—Check to complete party government.

References.—Hinsdale, *American Government*, 289–291; Goodnow, *Comparative Administrative Law*, i, 10.

FOR ADVANCED STUDY

The Presidency.—Burgess, *Political Science*, ii, 216–263, 307–319; Bryce, *American Commonwealth*, i, Chaps. V–IX; Ford, *American Politics*, Chap. XXII; Lockwood, *Abolition of the Presidency;* Cooley, *Constitutional Law*, Chap. V; Goodnow, *Comparative Administrative Law*, i, 59–82, 102–106, 127–138, 146–161; ii, 29–46; H. von Holst, *Constitutional Law*, §§ 25, 26, 55, 59, 60; Jennings, *Eighty Years of Republican Government*, Chaps. III, IV; Lalor, *Cyclopædia*, articles on *Confirmation, Electoral College, Electoral Commission, Executive Impeachment, Removals, Resignations, Veto;* Mason, *Veto Power;* Tucker, *Constitution*, Chap. XII.

The National Convention.—Dallinger, *Nominations for Elective Office*, 1–50, 74–94; *Official Proceedings* of *the National Conventions.*

The Election of the President.—Stanwood, *History of Presidential Elections;* Hart, *Practical Essays,* No. III; Bryce, *American Commonwealth,* i, Chap. VIII.

The Powers of the President.—Conkling, *Powers of the Executive Department;* Harrison, *This Country of Ours,* Chap. IV–XIX; Hart, *Practical Essays,* No. IV; Lockwood, *Abolition of the Presidency;* Mason, *Veto Power;* Salmon, *Appointing Power;* Whiting, *War Powers,* 66–83, 159–325; Richardson, *Messages of the Presidents.*

President Johnson's Conflict with Congress and His Impeachment.—Blaine, *Twenty Years of Congress,* ii, 1–15, 56–154; Lathrop, *Seward,* 404–418; Storey, *Charles Sumner,* 290–301, 346–351; Burgess, *Reconstruction,* 31–61, 142, 143, 157–194; Hart, *Contemporaries,* iv, 468–475, 479–481, 489–492; Hart, *Chase,* 357–361; McCulloch, *Men and Measures of Half a Century,* Chap. XXVI; Blaine, *Twenty Years of Congress,* ii, Chap. XIV.

The Heads of the Executive Departments.—Jameson, *Essays in Constitutional History,* 116–185; Harrison, *This Country of Ours,* Chaps. VI, XI–XVIII; Bryce, *American Commonwealth,* i, Chaps. IX, XXV; Lowell, *Essays on Government,* No. 1; F. Snow, *Defense of Congressional Government* (American Historical Association, *Papers*), iv, 309–328; American Academy of Political Science, *Annals,* iii, 1–13; *American Law Review,* XXIII; Ford, *American Politics,* 383–396; *Yale Law Journal,* vii, 1–19; Burgess, *Political Science,* ii, 262, 263, 311–316.

Officers of the Civil Service and their Appointment.—Fiske, *Civil Government,* 275–279; Salmon, *Appointing Power;* American Historical Association, *Report for* 1899, i, 67–86; Lodge, *Historical and Political Essays,* 114–137; Senate *Reports,* 50th Congress, 1 Session, No. 507; House *Reports,* 53d Congress, 1 Session, No. 11; *Messages of the Presidents; American Historical Review,* i, 270–283; ii, 241–261; iii, 270–291.

Treaty with Texas for Annexation.—H. von Holst, *Calhoun,* 222–245; H. von Holst, *United States,* ii, 602–657, 673–677; Schouler, *United States,* iv, 440–451, 457–459, 470; Burgess, *Middle Period,* 302–308; Wilson, *Division,* 144, 145; Schurz, *Clay.* ii, 235–

241; Benton, *Thirty Years' View*, ii, Chaps. CXXXV, CXXXVIII–CXLII.

Political Aspect of the Texas Question.—Wilson, *Division*, 145, 146; Schouler, *United States*, iv, 460, 461, 465–469, 471–474; H. von Holst, *United States*, ii, 657–673; Shepard, *Martin Van Buren*, 344–354; Johnston, *American Politics*, 145, 146; Hart, *Contemporaries*, iii, 649–652; MacDonald, *Select Documents*, 343–346; H. von Holst, *United States*, ii, 677–712; H. von Holst, *Calhoun*, 251–256; Burgess, *Middle Period*, 308–310, 318–323; Schouler, *United States*, iv, 482–488; Benton, *Thirty Years' View*, ii, Chaps. CXLVII, CXLVIII.

The Introduction of the Merit System into the Civil Service.—*Political Science Quarterly*, iii, 247–281; XIV, 240–250; Mason, *Veto Power*, §§ 25–28; American Historical Association, *Papers*, ii, 47–52; Bryce, *American Commonwealth*, ii, Chap. LXV; *Municipal Affairs*, iv, 708–720; Goodnow, *Comparative Administrative Law*, ii, 34–46; Eaton, *Government of Municipalities*, Chaps. VII, VIII; Lodge, *Historical and Political Essays*, 114–137; Curtis, *Orations and Addresses*, ii, 477–508; Hart, *Practical Essays*, No. IV; National Civil Service Reform League, *Proceedings;* United States Civil Service Commission, *Annual Report;* New York Civil Service Commission, *Annual Report; Atlantic Monthly*, LXVII, 252–257; LXXV, 239–246; Hart, *Contemporaries*, iii, § 158; iv, §§ 197, 199, 202.

CHAPTER VII

THE FEDERAL COURTS

111. Need of Federal Courts.—Under the Articles of Confederation the central power could not deal directly with the individual citizen; it could deal with him only through the government of the State to which he belonged. Under the Constitution the Federal Government holds immediate relations with the individual citizen; its laws apply to him, and the authority of its administrative officers reaches him directly. In the new position assumed by the Federal Government under the Constitution there were the following needs for Federal courts:

1. The laws passed by Congress bind directly the individual citizen in whatever State or Territory he may live, and Federal courts are needed to interpret and apply these laws.

2. The Constitution having been established as the supreme law of the land, Federal courts are needed as an authority to which appeal may be made to determine the harmony or conflict between the Constitution and the laws passed by Congress or by the several States, and thus to provide for maintaining the supremacy of the Constitution.

3. Federal courts are needed to decide such questions as in their nature may not properly be brought under the authority of State courts.

The system of United States courts covers the same territory as the whole body of State courts; and as every

citizen is at the same time directly under Federal laws and State laws, so is he directly subject to Federal courts and State courts. He is brought before the Federal courts for the violation of Federal laws and before the State courts for the violation of State laws. In the organization of the Federal courts the United States Marshal corresponds to the sheriff in the State courts. It is his duty to carry out the writs, judgments, and orders of the court. In every judiciary district there is not only a marshal but also a clerk of the court for the Federal court and a public prosecutor who is called the United States District-Attorney. All officers of these courts are subordinated to the Attorney-General.

Topics.—The Federal Government's relation to the individual citizen.—Need of Federal courts.—Territory covered by United States courts.—The United States Marshal.—Duty of the marshal.—Other officers.

References.—Bryce, *American Commonwealth*, i, 35, 225, 241; Dawes, *How We Are Governed*, 252–256; Fiske, *Civil Government*, 260; Hinsdale, *American Government*, 292; Lalor, *Cyclopædia*, ii, 647; Miller, *Lectures*, 310–315.

112. Scope of Federal Courts.—The Supreme Court was created by the Constitution, and Congress was empowered to establish other courts. All the United States courts except the Supreme Court were created by Congress. That part of the judicial power of the United States which has not been given to the Federal courts remains with the States. The power of the State courts is, therefore, all judicial power that has not been conferred upon the Federal courts, just as the power of the State legislatures is all legislative power that has not been conferred upon Congress. Every case that cannot be definitely shown to belong to a Federal court falls within the jurisdiction of a State court.

The scope of the Federal courts is indicated by an

enumeration and consideration of the cases which, in accordance with law, fall under the jurisdiction of these courts:

1. All cases in law and equity arising under the Constitution, the laws of the United States, and treaties made under the authority of the United States.

2. All cases affecting ambassadors, other public ministers, and consuls.

3. All cases of admiralty and maritime jurisdiction.

4. Controversies to which the United States shall be a party.

5. Controversies between two or more States; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State or the citizens thereof and foreign States, citizens, or subjects.

The eleventh amendment abrogated the possibility of cases "between a State and citizens of another State," as originally provided in the second section of the third article of the Constitution. The language of this amendment is that "the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state."

Topics.—Origin of United States courts.—Power of the State courts.—What cases belong to State courts.—What cases belong to Federal courts.—The eleventh amendment.

References.—Dawes, *How We Are Governed*, 261, 269–275; Fiske, *Civil Government*, 260–262; Hinsdale, *American Government*, 297–302; Miller, *Lectures*, 320–337.

113. The Supreme Court.—Although the Constitution created the Supreme Court, it did not fix the number of judges. This number is determined by Congress. At present there are nine, of whom one is the Chief Justice and

eight are Associate Justices. They are appointed by the President and confirmed by the Senate. They hold office for life or during good behavior. The fact that they cannot be removed except by impeachment is thought to give them independence and place them beyond the reach of unworthy influences. The Supreme Court sits in Washington, its regular annual session extending from October till July.

Some cases may be brought to the Supreme Court without having been before any other court. There are two classes of such cases. In the first class are those cases which "affect ambassadors, other public ministers, and consuls"; in the second class, those in which the State is a party. In these cases the Supreme Court is said to have original jurisdiction.

Some cases are brought to the Supreme Court after they have been tried in a lower court. Such cases are appealed to the Supreme Court; and in these cases the Supreme Court is said to have appellate jurisdiction. All cases that may be appealed from a lower court to the Supreme Court, with few exceptions, must involve an amount exceeding $5,000. The exceptions are such cases as may be appealed from the circuits to the Supreme Court without regard to the value of the controversy.[1]

The Supreme Court holds appellate jurisdiction over the Court of Claims which was instituted in 1855 with three judges to determine all cases against the United States. Since 1863 this court has been composed of five judges. Cases may be appealed to the Supreme Court also from the

[1] Formerly an appeal from the district courts directly to the Supreme Court occurred in general only when the district courts exercised circuit court powers. In all other cases, with the exception of prize cases, there was an appeal from the district court to the circuit court. The Judiciary act of March 3, 1891, abolished the appellate jurisdiction from the district to the circuit court in all cases and established the Circuit Court of Appeals. (See § 116.)

courts of the Territories of the United States, from the supreme court of the District of Columbia, from the State courts, and from the supreme court of the Philippine Islands.

During the annual term of the Supreme Court, sessions are usually held on Monday, Tuesday, Wednesday, Thursday, and Friday. The hours of the session are from twelve to four o'clock, and the place of meeting is in the capitol building at Washington.

The justices meet on Saturday morning to consider and decide the cases that have been argued before them during the week. If the justices are agreed on a decision, the preparation of a written opinion is assigned to some member of the court. It sometimes happens in important cases that no complete agreement is reached. In such cases an opinion of the court approved by a majority of the justices is issued, and also a dissenting opinion signed by the minority. There have been cases in which each justice has delivered an individual opinion.

Topics.—Number of Supreme Court judges.—Appointment and term of office.—Original jurisdiction of Supreme Court.—Appellate jurisdiction.—Time and place of sessions.—Time and mode of rendering decisions.

References.—Bryce, *American Commonwealth*, i, 229; 262–265; Hinsdale, *American Government*, 293–302; Hart, *Actual Government*, 301, 302; Miller, *Lectures*, 337–340, 344–350, 374–418.

114. **The District Courts.**—The territory comprised in the States of the Union is divided into a number of districts for judiciary purposes. At present (1911) there are ninety-five districts, including Alaska and Hawaii. Their boundaries follow the boundaries of the States except in cases where a State is divided into two or more districts. Many States constitute each one district. This is true of Massachusetts, Rhode Island, New Hampshire, Vermont, Maine, Connecti-

cut, Maryland, and some of the other States. New York is divided into seven districts; Pennsylvania has five; Texas, four. In each district there is a district judge, who is required to reside in his district and to hold there annually at least two terms of court. In case of the disability of the district judge, the circuit judge within whose territory the district lies may hold court for him. The jurisdiction of the district courts is wholly original, since the district courts are the lowest in the series of Federal courts. They hear both civil and criminal cases.

A district court may be held in and for the District of Columbia. This may be held by the Chief Justice of the supreme court of the District of Columbia or by any one of the five associate justices of that court. The district court for the District of Columbia exercises the same powers and jurisdiction as are exercised by any other district court; and appeals are taken from it to the Circuit Court of Appeals, as in the case of other district courts.

Topics.—Number of district courts.—Boundaries of the districts.—Terms of district courts.—Jurisdiction of district courts.—District court of the District of Columbia.

References.—Bryce, *American Commonwealth*, i, 231; Dawes, *How We Are Governed*, 265, 266; Fiske, *Civil Government*, 260; Hinsdale, *American Government*, 294–304; Hart, *Actual Government*, 303.

115. The Circuit Courts.—The territory of the States of the Union is divided into nine circuits, corresponding with the number of justices of the Supreme Court, one of whom is allotted to each circuit. For each circuit the President, with the advice and consent of the Senate, appoints a circuit judge who is required to reside in his circuit. Circuit courts are held by the circuit judge and by the district judge and by the justice of the Supreme Court allotted to the circuit, each sitting alone, or by any two of these

judges sitting together. The justice of the Supreme Court presides when present. The district judge may hold a circuit court only within his district.

Topics.—Number of circuits.—Method of holding circuit court. The three judges involved.—Restrictions on the district judge.—Terms of circuit courts.

References.—Bryce, *American Commonwealth*, i, 231; Dawes, *How We Are Governed*, 265, 266; Hinsdale, *American Government*, 295–303; Hart, *Actual Government*, 303; Macy, *Our Government*, 109–112.

116. The Circuit Court of Appeals.—The Circuit Court of Appeals was created by an act of Congress approved March 3, 1891. "Its primary purpose was to facilitate the prompt disposition of causes in the United States Supreme Court by relieving that court of the overburden of business resulting from the rapid growth of the country and the consequent steady increase of litigation." The act establishing this court provided for the appointment of an additional circuit judge for each of the nine circuits, and these judges were given the same power and jurisdiction as the United States circuit judges. The Circuit Court of Appeals consists of three judges taken from the judges competent to sit as judges in this court. These are the Chief Justice and Associate Justices of the Supreme Court assigned to each circuit, and the circuit judges within each circuit, and the several district judges within each circuit. This court tries only cases that are appealed to it from some other court. These cases are such as are brought to it by writ of error or appeal from the district and circuit courts, United States courts in the Indian Territory, and the supreme courts of the several Territories.

These four distinct grades of courts involve only the three classes of judges—supreme, circuit, and district judges.

Topics.—Establishment of the Circuit Court of Appeals.—Purpose of the court.—Judges.—The cases that may be tried by this court.

References.—Hinsdale, *American Government*, 303; Hart, *Actual Government*, 303; Macy, *Our Government*, 112.

117. The Court of Claims.—It is a generally adopted principle that no sovereign government can be arraigned before any tribunal without its own consent. At the same time it is held by the more thoroughly civilized states that their "ordinary tribunals shall decide all causes in which the sovereign is a party with as much freedom as those between private persons." It was in recognition of this principle that the makers of the Constitution in defining the scope of the judiciary powers of the United States provided that it should extend even "to controversies to which the United States shall be a party." It was not, however, until 1855 that a court was created before which cases of this kind could be brought; but in that year the Court of Claims was organized under an act of Congress approved February 24. At first this court consisted of a chief justice and two judges; but an act of Congress approved March 3, 1863, increased the number, making the court consist of one chief justice and four judges. These are appointed, like the other Federal judges, by the President with the advice and consent of the Senate, and hold their office during good behavior. Before the establishment of this court, relief of the kind here provided for had to be sought directly from Congress; and for some time after the court was organized, its judgments were required to be transmitted to Congress to be finally acted upon. Persons having claims against the United States found in this procedure little abatement of those grievances they had previously suffered. The act of March 3, 1863, enlarged somewhat the jurisdiction of the court and provided for an appeal to the Supreme Court. The ad-

vantages of this appeal were, however, practically nullified by the proviso "that no money should be paid out of the treasury upon an adjudication of the court until after an appropriation therefor should be estimated for by the Secretary of the Treasury." This virtually subjected the decision of the court to an executive officer. The act of March 17, 1866, repealed this provision and gave the court effective jurisdiction in general over claims against the Government and counter claims presented on the part of the Government.

Two other courts have been established recently:

1. A Court of Customs Appeals, created by the Tariff Act of 1910, consisting of a presiding judge and four associate judges appointed by the President, by and with the advice and consent of the Senate. This court has jurisdiction in all cases appealed from any Board of United States General Appraisers, no other court having jurisdiction in such cases. It may review all decisions by a Board of General Appraisers in all cases as to the construction of the law and the facts respecting the classification of merchandise and the rates of duty imposed thereon, and all the appealable questions as to the jurisdiction of said board, and all appealable questions as to the laws and regulations governing the collection of the customs revenues. (*Tariff Act of 1909, Section 29.*)

2. A Commerce Court created by an Act of Congress in June, 1910, to have jurisdiction over all cases for the enforcement of any order of the Interstate Commerce Commission, other than for the payment of money, and over cases brought to enjoin, annul, or suspend any order of that commission.

Topics.—Purpose of Court of Claims.—Establishment of the court, 1855.—Number of judges at first and later.—Appointment and term.—Grievances to be set aside by the court.—Steps in the progress of the court toward independence.—Present jurisdiction.

References.—Bryce, *American Commonwealth*, i, 239; Dawes, *How We Are Governed*, 276–279; Hinsdale, *American Government*, 304; Hart, *Actual Government*, 304.

118. Equity.—In framing a system of laws which are general in their application, it is not possible to make every law so perfect that no injustice will ever be done in administering it strictly. It was the original imperfection of the laws that gave rise to the ideas suggested by the term "equity" in connection with a system of laws. In theory, a case in equity originally arose when a subject, finding that the law as applied to him failed to render essential justice, appealed from the decision of the law to the conscience of the king who had made the law. The king, however, was not always in a position to deal in person with the case, and under such circumstances turned the whole matter over to his secretary, or chancellor. With this notion of the origin of equity in mind, one may see the force of Grotius's definition that *equity is the correction of that wherein the law, by reason of its generality, is deficient.* When this is the case, and the person directly affected has suffered unjustly under the decision, he naturally looks for redress; and the justice which he seeks appears to be identical with the notion of equity.

There exists no longer an appeal directly from the law to the lawmaker. All cases for the enforcement of rights or for the redress of wrongs are now presented to courts; some to courts of law, and others to courts of equity, or to law courts dealing with equity cases. A court of equity now differs from a court of law "mainly in the subject matters of which it takes cognizance and its mode of procedure and remedies."

In some countries cases in equity and cases in law are tried in distinct classes of courts, while in other countries the two kinds of cases are brought before the same court. In England the practice of having separate courts for the two classes of cases has generally been maintained, and in the United States some of the States have had and still have separate courts for cases in equity; but in other States the

same courts have jurisdiction in both law and equity. In the Federal Government there are no purely equity courts.

Topics.—Origin of equity cases.—How presented now.—Court of equity and court of law.—As to the two classes of courts in England and the United States.

Reference.—Miller, *Lectures*, 318, 319.

119. Courts and Constitutionality of Laws.—Pronouncing on the constitutionality of laws is one of the important functions of the courts of the United States. To determine the constitutionality of a legislative act is to determine whether the Legislature, in passing it, exceeded the power granted to that body by the Constitution or the superior authority under which the Legislature exists. This function of the courts is made necessary by the fact that the Constitution cannot be modified by Congress or by any established legislative body with regular, predetermined times for holding its sessions, and by the further fact that any other law with provisions not in harmony with the provisions of the Constitution is invalid. There is no law in England which holds the same position as the Constitution of the United States or the statutes made under it. The English Constitution is a bundle of laws and traditions which at any time may be set aside, wholly or in part, by an act of Parliament. There is, therefore, no need in England of a court to perform functions like those performed by the United States courts in pronouncing on the constitutionality or unconstitutionality of laws. The American court in performing these functions does not enter into a debate with the Legislature as to the constitutionality of a law. It hears a case under the law in question, brought before it in the regular order of procedure, and finds, in rendering judgment in the case, that the law under which the case is had is in harmony or not in harmony with the superior law.

If not in harmony, the alleged law, by that showing, is declared unconstitutional.

During the Civil War Congress caused paper money to be issued and passed a law making it legal tender, or lawful money. This law was tested in the only way provided for testing the validity of a law. A case involving it was brought before a court. A man in New York went to pay his creditor a certain sum of money and offered it in United States notes, or greenbacks. The creditor claimed he should be paid in gold and refused to accept the paper money. Moreover, he brought suit before the district court to compel the debtor to pay in gold. The court decided that the paper currency was lawful money, and that all debts might be paid in it. The creditor then appealed to the circuit court, which rendered the same decision as the district court. Finally he appealed to the Supreme Court, where it was decided that the law under which the paper money was issued was constitutional and valid. He could not, therefore, compel the debtor to pay in gold. The decision in this case showed that the Legal Tender Act was constitutional; and by this process it was shown that Congress had power to issue paper money.

Topics.—When a law is unconstitutional.—Need of inquiring into this point in the United States.—Why such inquiries not necessary in England.—How a law is declared unconstitutional by an American court.—Decision on the Legal Tender Act.

References.—Bryce, *American Commonwealth*, i, 373; Hinsdale, *American Government*, 318; Hart, *Actual Government*, 315–320; Lowell, *Essays*, 118–136; Miller, *Lectures*, 315–317.

120. **Independence of the Judges.**—The founders of the Government were moved by many considerations to seek to give the Federal judges sufficient independence to enable them to render practical justice in all cases. They are appointed, and they hold office during good behavior, and

they may not be removed except by impeachment. Conviction on impeachment is the only method of determining that their good behavior has ceased. They are appointed by the President and confirmed by the Senate and are, therefore, not obliged to seek popular favor for the sake of being retained in office. Having been appointed for life, they need not court the favor of the President. Their salaries may not be diminished during their continuance in office, and thus it is not in the power of Congress to starve them into obedience to its will. But an opinion of the Supreme Court may be overruled, as already indicated, by an action of Congress and the President in increasing the number of judges. Any judge of any United States court, having attained the age of seventy years, and having been ten years in service, may resign and receive the same salary as that which he had while in the active performance of the duties of his official position.

Topics.—Independence strengthened by tenure of office.—Removal.—Judges not obliged to seek favor.—Congress not able to reduce the salaries of judges while in office.—Continuance of salaries of Federal judges.

References.—Bryce, *American Commonwealth*, i, 239, 272, 305; Dawes, *How We Are Governed*, 259; Hinsdale, *American Government*, 295, 296; Miller, *Lectures*, 340–344.

121. **Law Applied by Federal Courts.**—The Federal courts with respect to their jurisdiction differ from the State courts. Some features of this difference arise from the fact that the legal system of each State rests on the common law, while the Federal organization as such has no such basis. The common law of the States was for the most part derived from England, but it has undergone certain modifications in the several States through the influence of local circumstances and practices. The Federal courts, on the other hand, must find their law in the Constitution and

in written law enacted under the authority of the Constitution. In every case where they would impose a penalty they must find the power to do it in the Constitution, in a law passed by Congress, or in a treaty. "But the Federal courts sitting in the several States, where their jurisdiction depends upon the character or residence of the parties who sue or are sued, administer for the most part the local law; and they take notice of the State common law, usages, and statutes, and apply them as the State courts would apply them in like controversies." [1]

Topics.—Difference between Federal and State courts.—Origin of the common law.—Law applied by Federal courts.—Local law sometimes administered by Federal courts.

References.—Hart, *Actual Government*, 306–314; Cooley, *Constitutional Law*, 131.

122. **Impeachment.**—The Government of the United States is so organized that every civil officer is subject not only to the restraints of the ordinary law courts, but also to legislative or executive control, and to the process of impeachment. In all cases where executive authority has been conferred by statute, the jurisdiction of the officer abusing it may be taken away by the Legislature, or the officer may be removed by the Executive, or he may be impeached under the provisions of the Constitution. A court, for example, established by statute may be abolished; the functions of an officer may be set aside or added to the duties of another officer; but the most practicable and effective restraints on civil officers are found in the provisions for impeachment, made by the Constitution. Under these provisions the House of Representatives has "the sole power of impeachment." The court before which the House brings the case is composed of the members of the

[1] Livingston's Lessee *vs.* Morse, 7 Pet., 469.

Senate; for the Senate has "the sole power to try all impeachments." "When the President of the United States is tried, the chief justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present." "Judgment in cases of impeachment shall not extend further than removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law." In case of judgment rendered in an impeachment trial, the President has no power to grant reprieve or pardon.

The Constitution does not classify or describe the offenses subjecting persons to impeachment. It provides, however, that "the President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, and other high crimes and misdemeanors." It is asserted, because the Constitution leaves the party convicted, liable, and subject to indictment according to law, that, therefore, the power of impeachment reaches only such offenders as may be indicted and punished according to law. On the other hand, the phrase "high crimes and misdemeanors" is affirmed to be intentionally vague in order that any officer may be reached by this process; and it appears to be settled that the President or any other officer may be impeached for any offense, and that it remains for the House to determine in what cases it is expedient to institute impeachment proceedings. Some doubt has been expressed as to whether an officer may escape impeachment by resigning his office. In view of the fact that the judgment in an impeachment case may not extend further than removal from office, there appears nothing to be obtained by impeachment, provided the person it was proposed to impeach has resigned before the indictment is presented. But in the case of William

W. Belknap, who was Secretary of War under President Grant and who resigned a short time before the passage of the resolution to impeach him, it was voted by the Senate that he was subject to trial by impeachment although he had, by resigning, ceased to be Secretary of War.[1]

Topics.—Means of setting aside an officer.—Power of impeachment.—Court for impeachment cases.—In case of impeaching the President.—Judgment in cases of impeachment.—Cause for impeachment.—Possibility of escape from impeachment by resigning office.—Belknap's case.

References.—Goodnow, *Comparative Administrative Law*, ii, 296–298; Hinsdale, *American Government*, 170–174; Hart, *Actual Government*, 304–306; Lalor, *Cyclopædia*, ii, 480.

123. Cases of Impeachment.—The first conspicuous case of impeachment was that of United States Senator William Blount, of Tennessee, in 1797. The charge against him was that he was engaged in a conspiracy to transfer New Orleans and the neighboring territory from Spain to Great Britain. He was to furnish a land force to coöperate with a British fleet in carrying out the plan. The evidence against him was a letter written by him to an Indian agent among the Cherokees. This letter, together with other papers, was laid before Congress by the President. As soon as the Senate learned that the House intended to impeach him, that body immediately placed him under bonds to appear for trial, and subsequently expelled him. The time for the trial was set for December, 1798; but Blount had in the meantime been elected to the Senate of Tennessee and did not appear. The most important point in the defense made by his counsel was that as senator he was not a "civil officer" liable to impeachment. This plea was sustained, and Blount was acquitted. The ground of acquittal was the Senate's want of jurisdiction.

[1] See page 213.

Judge John Pickering, of the Federal district court for the district of New Hampshire, was impeached in 1803. The charge against him was that he had rendered decisions contrary to law, that he was habitually drunk, and that he had been guilty of profanity while on the bench. The counsel for the defense undertook to prove that the accused was insane. To this the managers on the part of the House replied that the insanity, if shown, was a consequence of habitual drunkenness, and that to substantiate the fact of insanity was not to disprove the charge. The Senate, by a party vote, decided for conviction, and removed the accused from office.

Samuel Chase, a justice of the Federal Supreme Court, was impeached in 1804. The charges against him covered a number of specifications: (1) That Justice Chase had refused to allow the counsel for John Fries to argue various points of law, and had announced his opinion as already formed, causing the counsel to abandon the case; (2) that in the trial of J. T. Callender for sedition, he had refused to excuse a juror who had already formed the opinion that the accused was guilty; (3) that he had refused to allow one of Callender's witnesses to testify; (4) that he had so far interfered with Callender's counsel in the conduct of the case as to lead him to abandon it; (5) that, in a case which was not capital, he had arrested, instead of summoning, the accused; (6) that he had refused to allow a case to be postponed when there appeared to be good ground for postponement; (7) that he had urged a grand jury in Delaware to find an indictment under the Sedition Law against its will; (8) that he had made "highly indecent and extrajudicial" reflections on the Government of the United States before a grand jury in Maryland. The last item refers to the judge's habit of delivering disquisitions in connection with his charges to the grand juries, which contained vigorous comments on current political events. There appeared to be a small majority in

favor of conviction on the third, fourth, and eighth charges; but, as the majority found him not guilty on all the other specifications, he was ultimately found to be not guilty on any, and continued to hold his position in the court during the rest of his life.

Judge Peck, of the district court in Missouri, was impeached by the House in 1830. The charge was arbitrary conduct in punishing for contempt of court an attorney who had published a severe criticism on his decision in a certain land case. The Senate was nearly equally divided. The vote in reaching a decision stood twenty-four to twenty-one in favor of the accused, and he was acquitted.

Judge Humphreys, of the Federal district court in Tennessee, was impeached and tried in 1862. He had retained his seat on the bench while actually engaged in promoting the interests of the Rebellion. Impeachment was resorted to as a means of making the post held by Humphreys vacant, and the Senate voted unanimously for conviction.

Andrew Johnson, President of the United States, was impeached in 1867. He was charged with conduct involving intention to violate the Tenure of Office Act; conspiracy to prevent E. M. Stanton from acting as Secretary of War; conspiracy to seize the War Department's property by force, and to control unlawfully the disbursement of the funds of that department. He was charged, moreover, with an attempt to induce General Emory, commanding the Department of Washington, to violate acts regulating the issuance of orders to the army; and with giving expression, with reference to Congress, to "utterances, declarations, threats, and harangues, highly censurable in any, and particularly indecent and unbecoming in the chief magistrate of the United States, by means whereof said Andrew Johnson has brought the high office of President into contempt, ridicule, and disgrace, to the great scandal of all good

citizens"; also with denying that the legislation of Congress was binding upon him, and that Congress had any power to propose amendments to the Constitution. The charges were distributed under eleven heads. A vote was taken, May 16, on the eleventh article first, showing thirty-five for conviction and nineteen for acquittal. Ten days later a vote was taken on the second and third articles with the same result. The majority lacking one vote of the two-thirds requisite for conviction, the Chief Justice ordered a verdict of acquittal to be entered on the records.

William W. Belknap, Secretary of War, was impeached in 1876. He was charged with receiving money for the appointment and retention in office of a post trader in Indian Territory. A few hours before the passage of the resolution to impeach him, he resigned; but it was decided by a vote of thirty-seven to twenty-nine that he was subject to trial by impeachment. This vote, however, indicated that the majority requisite for conviction could not be obtained; and after the presentation of the evidence and the arguments it was found that the vote on some of the articles stood thirty-five to twenty-five, on others thirty-six to twenty-five, and on still others thirty-seven to twenty-five. The requisite majority of two-thirds not being had on any article, the Senate rendered a verdict of acquittal.

Topics.—Senator William Blount.—Judge John Pickering.—Samuel Chase.—Judge Peck.—Judge Humphreys.—Andrew Johnson.—Secretary Belknap.

References.—Goodnow, *Comparative Administrative Law*, ii, 298, 299; Hinsdale, *American Government*, 174, 175; Lalor, *Cyclopædia*, ii, 480.

124. Court-Martial.—A court-martial is a tribunal for the trial of offenses arising in the military and naval service. It is created under the authority of Congress and is composed of a varying number of officers. In Great Britain there are

three grades of court-martial—general, district or garrison, and regimental, and the distinction of these grades is observed also in the United States. The general court-martial consists of any number of officers from five to thirteen. They may be appointed by the President or by any general officer commanding the army of the United States, a separate army, or a separate department. In the case of the garrison or regimental court-martial, the members of the court are appointed by the commanding officer. Before the sentence in any case tried by the court is carried out, it must be approved by the appointing officer. The jurisdiction of a court-martial is confined to persons duly enlisted or appointed in the military or naval service; and the concurrence of two-thirds of the members of the court is required to pronounce the sentence.

Topics.—Description of a court-martial.—Grades in Great Britain and the United States.—Appointment.—Approval of sentence.—Jurisdiction of a court-martial.

References.—Lalor, *Cyclopædia*, i, 693; Cooley, *Constitutional Law*, 137, 138.

FOR ADVANCED STUDY

The Supreme Court.—Bryce, *American Commonwealth*, i, Chaps. XXII–XXIV; Carson, *Supreme Court;* Thayer, *John Marshall*, Chaps. III–V; Tucker, *Constitution*, i, Chap. XIII; Willoughby, *Supreme Court;* Goodnow, *Comparative Administrative Law*, ii, 144–216; Cooley, *Constitutional Law*, Chap. VI; Cooley and others, *Constitutional History*, 29–52.

John Marshall and His Interpretation of the Constitution.—Cooley and others, *Constitutional History*, Chap. II; Morse, *Adams*, 321, 322; Schouler, *United States*, i, Index; Magruder, *John Marshall*, 82–201.

Decisions of Chief Justice Taney and their Influence on the Constitutional Development of the United States.—Cooley and others, *Constitutional History*, 120–199; MacDonald,

Select Documents, 295–298; Supreme Court *Reports,* 11 Peters–2 Black.

The Dred Scott Decision.—MacDonald, *Select Documents,* 416–435; Nicolay and Hay, *Abraham Lincoln,* ii, Chap. IV; Rhodes, *United States,* ii, 249–271; H. von Holst, *United States,* vi, Chap. I; Lincoln, *Works,* i, 228–235; Hart, *Contemporaries,* iv, 122–135; Lathrop, *Seward,* 181–186.

Relation of the Courts to Legislation.—Thayer, *Origin and Scope of the American Doctrine of Constitutional Law;* Thayer, *John Marshall,* 61–78, 95–101, 104–110; Thayer, *Cases on Constitutional Law,* i, 9–47, 146–154; Coxe, *Judicial Power and Unconstitutional Legislation; American Law Review,* xix, 175–203; Cooley and others, *Constitutional History,* 9–14, 37–43, 76–80, 179–188, 221–223, 226–233.

The Decision in the Case of McCulloch *vs.* the State of Maryland.—Channing and Hart, *Guide,* 358; Supreme Court *Reports,* 4 Wheaton, 316.

The Webster-Hayne Debate.—Channing and Hart, *Guide,* 370.

The Interpretation of the Constitution.—Bryce, *American Commonwealth,* 366–375; Lalor, *Cyclopædia,* i, 610, 611; Channing and Hart, *Guide,* 326–328.

The Dartmouth College Case.—Supreme Court *Reports,* 4 Wheaton, 518.

Daniel Webster's Interpretation of the Constitution.—Webster's *Works.*

CHAPTER VIII

RIGHTS AND PRIVILEGES OF CITIZENS

125. The Historical Basis of Political Liberty.—The common, or so-called unwritten, law of England was a significant part of the heritage of the United States. It involved the rights that had been specifically set forth "in certain historical documents, which in both England and America, had been looked upon and revered as the charters of liberty."[1] The most important of these documents are Magna Charta, the Petition of Right, the *Habeas Corpus* Act, and the Bill of Rights. They represent stages in the growth of individual liberty, and together constitute the basis of many of the rights enjoyed by citizens of the United States. They were issued to redress grievances, or to furnish guarantees for the recognition of the rights of the people in the future.

In the thirteenth century the barons of England, in order to be able to force the king to restore their ancient rights, made common cause with the people. As a result of the conflict that ensued, the Great Charter was granted in 1215. With respect to the later liberties of the English people, whether in England or in any other part of the world, the most important provision of that charter was the following: "No freeman shall be taken, or imprisoned, or be disseized of his freehold or liberties or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will

[1] Cooley, *Constitutional Law*, 6.

we pass upon him nor condemn him but by a lawful judgment of his peers, or by the law of the land; we will sell to no man, we will not deny or defer to any man, either right or justice." This provision confirmed ancient liberties and guaranteed personal security for the future. The common man was protected in the possession of the property especially necessary for his economical welfare: "even a villain or rustic should not by any fine be bereaved of his carts, ploughs, and implements of husbandry." The constitutional principle "that no taxes shall be laid except by consent of the persons taxed, expressed through their representatives," was established by the provision that "no scutage[1] or aid shall be imposed in our kingdom unless by the General Council of our Kingdom."

The Petition of Right recited and reaffirmed the principles that had been established in Magna Charta. It is a statute passed in 1627, in the early part of the reign of Charles I. Its aim, like that of Magna Charta, was to secure the personal and civil liberties of the people against the encroachments of the king. It proposed not to create new rights, but to reëstablish and defend those which English subjects had previously enjoyed. It prohibited unlawful taxes and assessments, forced loans, illegal arrests and imprisonments, the quartering of soldiers on private citizens, and a resort to martial law in civil cases. This petition, having been voted by Parliament and approved by the king, strengthened the foundation of English liberty that had been laid by the Great Charter. It provided against illegal arrests and imprisonments; but in order to make effective these provisions, there was needed a clear and definitely established procedure of relief. This was furnished by the *Habeas Corpus* Act, passed in 1679, in the reign of Charles II.

[1] Shield money (Latin, *scutum*, a shield); a tax paid in lieu of military service.

The *Habeas Corpus* Act requires the body of a person restrained of liberty to be brought before the judge or into court, that the lawfulness of the restraint may be investigated and determined. Through the procedure furnished by this act, the guarantees of personal liberty provided in the ancient charters became effective, and another addition was made to the structure of constitutional liberty which the English people were building.

Liberty was, however, not won by a single battle. The appearance of arbitrary kings from time to time tended to set aside the advantages which had been gained by the people. The last effort to establish the absolute power of the Crown was made by the Stuart kings. Their overthrow offered the opportunity for a final reëstablishment of the rights and liberties of the people. This was done through the Declaration of Rights, which, as the Bill of Rights, became the law of the land in the early part of the reign of William and Mary. This statute declared the right of the subject to petition the king. It established freedom of election of members of Parliament, and freedom of speech in Parliament. It made illegal the maintenance of standing armies without the consent of Parliament, and affirmed that the king had no power of suspending, or dispensing with, laws. It provided that excessive bail should not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. It formulated many of the most vital political principles that underlie modern constitutional government.

Topics.—Common law and rights.—Important documents in the evolution of rights of Englishmen.—Purpose of these documents.—The Great Charter.—Petition of Right.—*Habeas Corpus* Act.—Bill of Rights.

References.—Cooley, *Constitutional Law*, 6–8; Fiske, *Civil Government*, 195–200; Hart, *Actual Government*, 21–23, 39–41; Lalor, *Cyclopædia*, ii, 800; Lowell, *Essays*, 60–117.

126. The Bill of Rights and the Constitution of the United States.—The Constitution, as submitted to the States, provided that the privilege of the writ of *habeas corpus* should not be suspended unless, when, in case of revolution or invasion, the public safety might require it. It provided also that no bill of attainder[1] or *ex post facto* law[2] should be passed, and that the trial of all crimes, except in cases of impeachment, should be by jury. These restrictions, however, were not thought to be sufficiently extensive. The people still feared oppression by the Government; and, when they found that the Constitution contained no bill of rights, they refused to adopt it until persuaded that an amendment would be made containing the desired provision. They held that a recognition of the fundamental rights that had been won by the people in the English struggle for liberty was essential to good government. They wished the Constitution to contain a bill of rights; and, in obedience to this wish, the early amendments were adopted. The first ten amendments have the character of a bill of rights, and several of their provisions indicate a direct descent from the English law. They affirm the right of the people to petition the Government for a redress of grievances; that "no soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law," and that "excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted." The limitations stated in these provisions refer only to the action of the Federal Government. The clause affirming that no bill of attainder or *ex post facto* law shall be passed restricts simply the powers of the Congress. Referring to Marshall's decision, Cooley formulates briefly the accepted doctrine on this subject, as follows: "The

[1] See page 220.

[2] See page 221.

restrictions imposed upon government by the Constitution and its amendments are to be understood as restrictions only upon the government of the Union, except where the States are expressly mentioned."[1]

A bill of attainder, which both Congress and the State legislatures are expressly forbidden to pass, is a law framed and enacted by a legislature declaring a person by name, or declaring a class of persons, to be guilty of crime, and ordering him or them to be capitally punished. When the punishment mentioned in the law is of a degree less than death, the law is technically known as a bill of pains and penalties. In a decision of the Supreme Court, delivered by Mr. Justice Field, is found the following definition: "A bill of attainder is a legislative act which inflicts punishments without a judicial trial. If the punishment be less than death, the act is termed a bill of pains and penalties. Within the meaning of the Constitution, bills of attainder include bills of pains and penalties. In these cases the legislative body, in addition to its legitimate functions, exercises the powers and office of judge: it assumes, in the language of the text-books, judicial magistracy; it pronounces upon the guilt of the party, without any of the forms or safeguards of trial; it determines the sufficiency of the proofs produced, whether conformable to the rules of evidence or otherwise; and it fixes the degree of punishment in accordance with its own notions of the enormity of the offense. These bills are generally directed against individuals by name; but they may be directed against a whole class."[2] Condemnations of this kind may represent an extreme of tyranny; for "no trial is necessary, no legal evidence, no notice to the accused, no opportunity for defense, no examination of witnesses, even no crime."

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[1] Cooley, *Constitutional Law*, 19.

[2] Cummings *vs.* the State of Missouri, 4 Wallace, 277.

It is not difficult to see how objections to *ex post facto* laws might find expression in a constitutional prohibition. This is a technical term which applies only within the field of criminal law. *Ex post facto* laws are only such laws "as declare an act criminal, and provide for its punishment, which, at the time of its commission, was not a crime; or such as change the punishment of a known crime in any other manner than by mitigating it, and are to operate upon past as well as future offenses; or such as alter the rules of evidence or other procedure, so that conviction shall be made easier, and are to apply as well to those who committed the act prior, as to those who committed it subsequently, to the passage of the statute."

Topics.—Restrictions in Constitution as submitted.—Popular view as to a bill of rights.—Nature of first ten amendments.—Bill of attainder.—Bill of pains and penalties.—*Ex post facto* laws.

References.—Bryce, *American Commonwealth*, i, 28; Cooley, *Constitutional Law*, 17–19; Hinsdale, *American Government*, 109; Lalor, *Cyclopædia*, i, 284; Lowell, *Essays*, 83.

127. Bill of Rights in State Constitutions.—The prominence given to the "Rights of Man" in the discussions in France during the French Revolution called attention to the principles of the Bill of Rights; and, after this, constitution makers gave larger place than previously to statements of these general principles. The Bill of Rights has, therefore, become a conspicuous feature of recent State Constitutions and merits a careful consideration, since it sets forth certain principles that are fundamental in the American Government. The following are the essential propositions contained in the Bill of Rights found in the several State constitutions:

1. All men are by nature equally free and independent, and have certain inherent rights; among these are life, liberty, and the pursuit of happiness.

2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people.

3. Every person has a right to worship God according to the dictates of his own conscience; and no person can of right be compelled to attend, erect, or support, against his will, any place of religious worship, or pay any tithes, taxes, or other rates for the support of any minister of the gospel or teacher of religion.

4. No money shall be drawn from the public treasury for the benefit of religious societies or theological or religious seminaries.

5. The civil and political rights, privileges, and capacities of no individual shall be diminished or enlarged on account of his opinion or belief concerning matters of religion.

6. Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. In all prosecutions or indictments for libel, the truth may be given in evidence to the jury; and if it appear to the jury that the matter charged as libelous was true, and was published with good motives and justifiable ends, the party shall be acquitted.

7. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches shall not be violated; and no warrant shall be issued except on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

8. The right of trial by jury shall remain inviolate.

9. In all criminal prosecutions, and in cases involving the life or liberty of the individual, the accused shall have right to a speedy and public trial by an impartial jury; to be informed of the accusation against him, and to have a copy of the same when demanded; to be confronted with the

witnesses against him, to have compulsory process[1] for his own witnesses, and to have the assistance of counsel.

10. All offenses that are less than felony, and in which the punishment does not exceed a fine of $100, or imprisonment for thirty days, shall be tried summarily before a justice of the peace, or other officer authorized by law, on information under oath, without indictment or the intervention of a grand jury, saving to the defendant the right of appeal; and no person shall be held to answer for any higher criminal offense, unless on presentation or indictment by a grand jury, except in cases arising in the army or navy, or in the militia when in actual service, in time of war or public danger.

11. Excessive bail shall not be required, nor shall excessive fines be imposed, nor cruel and unusual punishments inflicted.

12. No bill of attainder, *ex post facto* law, or law impairing the obligation of contracts shall be passed.

13. The writ of *habeas corpus* shall not be suspended or refused when application is made as required by law, unless, in case of rebellion or invasion, the public safety may require it.

14. The military shall be subordinate to the civil power. No standing army shall be kept up by the State in time of peace; and in time of war no appropriation for a standing army shall be for a longer time than two years.

15. No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war except in the manner prescribed by law.

16. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them

[1] A process, in law, is the summons, mandate, or command by which a defendant or a thing is brought before a court for litigation; in other words, it is the means employed in compelling the defendant to appear in court.

aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses of the same overt act, or confession in open court.

17. No person shall be imprisoned for debt in any civil action on mesne or final process,[1] unless in case of fraud; and no person shall be imprisoned for a militia fine in time of peace.

18. The people have the right freely to assemble together to counsel for the common good, to make known their opinions to their representatives, and to petition for a redress of grievances.

19. No person shall, after acquittal, be tried for the same offense. All persons shall, before conviction, be bailable by sufficient securities, except for capital offenses where the proof is evident or the presumption great.

20. Private property shall not be taken for public use without just compensation first being made or secured, to be paid to the owner thereof as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.

In some of the later constitutions there is observed a tendency to take for granted or to lay aside these general maxims and to introduce specific declarations.

Topics.—Bill of Rights during French Revolution.—Bill of Rights in State constitutions.—Tendency in later constitutions.

References.—Bryce, *American Commonwealth*, i, 438–442, 711; Hinsdale, *American Government*, 109, 376; Macy, *Our Government*, 30.

128. Suspension of the Writ of Habeas Corpus.—To suspend the writ of *habeas corpus* means to make such pro-

[1] A *mesne process* is any process in a suit which intervenes between the original process of writ and the final execution; while the *final process* is the writ of execution used to carry the judgment of the court into effect.

vision that persons arrested will not have the right to an immediate hearing before a court, thus making it possible for persons to be arrested and imprisoned without regular process of law. The power to suspend the writ of *habeas corpus*, according to the decisions of the Supreme Court, is a legislative power; and the President cannot exercise it except as authorized by law.[1] But practice has not always followed this doctrine. In 1861, President Lincoln issued an order to Lieutenant General Scott suspending the writ. This was two years before Congress passed its first act for the same purpose. The President's action was thought to be justified by the following opinion of Attorney-General Bates: "If by the phrase, 'the suspension of the writ of *habeas corpus*,' we must understand a repeal of all power to issue the writ, then I freely admit that none but Congress can do it. But if we are at liberty to understand the phrase to mean that in case of a great and dangerous rebellion like the present, the public safety requires the arrest and confinement of persons implicated in that rebellion, I as freely declare the opinion that the President has lawful power to suspend the privilege of persons arrested under such circumstances; for he is specially charged by the Constitution with the public safety, and he is the sole judge of the emergency which requires his prompt action."

The Constitution does not formally adopt the writ of *habeas corpus*, but presumes it to be authoritative in the United States as a part of the common-law inheritance from England. This presumption is expressed in the provision that "the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion, the public safety may require it." The writ of *habeas corpus* exists as an element of State law either by informal recognition or by a specific act of the Legislature; and the State

[1] Cooley, *Constitutional Law*, 289.

constitutions make essentially the same reference to its suspension as the Federal Constitution. The purpose of the writ is to make such provisions that persons arrested may not, for any considerable period of time, be deprived of their liberty unless the ground of their detention is such as to convince a court that under the law they should be imprisoned. The writ may, moreover, be appealed to to set free any person illegally deprived of his liberty, or to set free a person confined under a false charge of insanity, or by parents to get control of their children unlawfully detained by others.

By proceeding with military force against a part of the nation in rebellion, the President, as commander in chief, brings about a state of things in which the writ of *habeas corpus* is practically suspended. "During the administration of President Washington, the military authorities engaged in suppressing the Pennsylvania 'Whisky Insurrection' of 1794 and 1795, disregarded the writs which were issued by the courts for the release of the prisoners who had been captured as insurgents. General Wilkinson, under the authority of President Jefferson, during the Burr Conspiracy of 1806, suspended the privilege of this writ, as against the superior court of New Orleans." The declaration of martial law has the effect of suspending the writ of *habeas corpus*.

Topics.—Effect of suspending writ of *habeas corpus*.—Power to suspend the writ.—Lincoln's action.—Attorney-General's opinion.—*Habeas corpus* and the Constitution.—Purpose of the writ.—Suspension in case of rebellion.

References.—Bryce, *American Commonwealth*, i, 55; Fiske, *Civil Government*, 257; Hinsdale, *American Government*, 237–239; Hart, *Actual Government*, 27; Lalor, *Cyclopædia*, ii, 432; Miller, *Lectures*, 349, 487.

129. The Rights of the Individual and the Community.—That the community also has rights is a fact that is not

always kept distinctly in mind. The struggle of the individual citizen to secure a recognition of his rights has been so long and absorbing that now, when his purpose is attained, he appears sometimes unmindful of any pretensions other than his own. The laws of the United States, however, in many places proclaim the superior rights of the community. The individual citizen has attained the right to worship in accordance with the dictates of his conscience; but when in the enjoyment of this liberty he institutes practices that seem to the State subversive of the best interests of the community, the rights of the community are asserted to the limitation of the freedom of the individual. If a community is convinced that, in order to attain its highest well-being, polygamy should not be practiced, it bases on this fact its right to overrule and set aside this practice or any other practice in conflict with this conviction, even though such practice has the sanction of religious ideas. Furthermore, private property and the right of the individual citizen to hold it are guarded and hedged about by the organized forces of the community as if their maintenance were the one paramount object of the State; yet, whenever any private property is demanded for the use of the public, the individual citizen's rights yield before the rights of the community. This is seen in the application of the law of eminent domain.

Topics.—Rights of the community.—Danger of neglecting community rights.—Limitation of rights claimed under religious liberty.—Right of eminent domain.

References.—Dawes, *How We Are Governed*, 208–296; Ford, *American Citizen's Manual*, Part II, 1–3; Hart, *Actual Government*, 19–26; Lalor, *Cyclopædia*, ii, 141; iii, 162; Lowell, *Essays*, 60–117.

130. **Eminent Domain.**—The right of the Government to take property for public use on making compensation

for it at a valuation fixed by agents of the Government is called the right of eminent domain. Under those governments where in theory the property is held by grant from the sovereign, the exercise of the right of eminent domain may be regarded as the act of taking back the property originally granted. It is presumed under this theory that the sovereign, in making the grant, necessarily by reason of his sovereignty reserved the capacity to revoke it. Essentially the same result is reached under a republican form of government, but the theory of the operation is different. The republic proclaims a public need and benefit, and asserts the superior right of the community. The Constitution presumes this right to exist in a sovereign government, and subjects it to regulation in the United States by declaring that private property shall not be taken for public use without just compensation. To take land or other property under this right is to *condemn* it. This right is most frequently exercised in taking lands for roads, railroads, canals, or parks; but other forms of property may be reached by it when it appears that they are needed for some public use.

The power to take property under this right may be said to belong primarily to the States, since they "are expected to make provision for the conveniences and necessities of public travel, and for the other wants of the general public, and of the State itself"; yet for all national purposes the power may be exercised by the Government of the United States. In the relation of the Territory to the right of eminent domain, we observe a distinction between the State and the Territory, since in the Territory the right of eminent domain belongs to the Federal Government. When, however, the Territory becomes a State, the right passes with all its incidents to the new organization—that is, to the State.

The exercise of this right by the Government is distinguished from taxation in that taxes are contributions which

the citizen makes toward the maintenance of the Government under a general law; while property taken under the right of eminent domain is required of particular persons, and similar requirements are not necessarily made from other members of the community. Because it is a special demand in no way equalized with the demands made on other citizens, justice requires that compensation should be made for property thus appropriated.

Some of the purposes for which the Government causes private property under this right to be appropriated are easily recognizable as public. Among these are the construction of fortresses, lighthouses, piers, docks, military roads, and public buildings. But it is not easy to distinguish clearly between those purposes which are public and those which are not public. The decision of this question in every case rests with the Government. The Government voices the needs of the nation or the community and decides with reference to any particular piece of property whether it is or is not required to satisfy those needs. The property that is thus subject to condemnation and appropriation is not merely land and other forms of real estate, but any kind of property protected by the laws of the United States.

In proceeding under this power to take possession of property required for public purposes, the Government usually attempts to make an agreement with the owner as to the compensation to be paid, and, failing in this, resorts to the method prescribed by law; and to this end provides an impartial tribunal to assess the amount of damage that will result to the owner in being deprived of the property in question. The property appropriated may be used immediately by the State, or a corporation created by law to render some public service may be empowered to appropriate it for the specified purpose. Thus a railroad company, to cite a single familiar illustration, organized to render the

services of a common carrier, may be authorized by the Legislature to condemn land to be used by it for its roads.

Topics.—Define the right of eminent domain.—Theory of this right in the Republic.—Attitude of the Constitution toward this right.—For what purposes most frequently exercised.—How exercised in a Territory.—Compared with taxation.—Decision as to when it may be exercised.—Method of proceeding in the exercise of this right.

References.—Fiske, *Civil Government*, 4; Ford, *American Citizen's Manual*, Part II, 14; Cooley, *Constitutional Law*, 331–342.

131. The Right to Assemble and the Right to Petition.—Popular government presumes that the people shall have the right to assemble and the right to petition the public authorities for a redress of grievances. These rights were secured to the people of the United States by the first amendment to the Constitution. The term "people," when it is said that the people elect the officers whose election is provided for by law, embraces only those persons who have the privilege of voting, or, in other words, those who enjoy political rights. But as used here, it comprehends all members of the nation, those who enjoy only civil rights as well as those who enjoy both civil and political rights. Whether voters or not, they may assemble and may petition the Government for such changes in legislation or administration as may seem to them desirable. The right to assemble is understood to carry with it the right to discuss questions of common or public interest. They may be religious questions, political questions, questions of moral or industrial reforms, or any other matters relating to the organization or welfare of society. The conclusions reached by such assemblies may relate simply to the affairs of private associations with which the Government is not immediately concerned; or they may deal with subjects in which the legislative or executive authority is vitally interested. In

the latter case they may exert more or less influence in modifying the laws or changing the administrative policy. Important social or political reforms have sometimes their beginnings in the deliberations of private associations, so that in guaranteeing the right to assemble, the Constitution has established conditions favorable to the moral and legal progress of society. When, however, assemblies assume the character of riotous meetings tending to impede the operation of the normal and beneficent forces of social growth, and thus to check the progress of the nation or of any part of it, they have forfeited their claim to governmental protection; for their conduct and influence are inconsistent with the purposes of government.

Topics.—The right to assemble.—The right to petition.—Advantages and limitations of these rights.

References.—Dawes, *How We Are Governed*, 309, 310; Ford, *American Citizen's Manual*, Part II, 6; Hinsdale, *American Government*, 352; Lalor, *Cyclopædia*, iii, 169.

132. Freedom of Speech and of the Press.—The right to assemble is not of great importance unless it is accompanied by the right of free speech and of free publication. Freedom of speech and of the press, as it exists in the United States, was established through the common law. The inhabitants of the colonies enjoyed this freedom before the formation of the Federal Government. It is defined as "the liberty to utter and publish whatever the citizen may choose, and to be protected against legal censure and punishment in so doing, provided the publication is not so far injurious to public morals or to private reputation as to be condemned by the common-law standards, by which defamatory publications were judged when this freedom was thus made a constitutional right. And freedom of speech corresponds to this in the protection it gives to oral publications." The Constitution assumes the existence of this

liberty and provides that Congress shall make no law abridging the freedom of speech or of the press. Therefore, the inhabitants of the United States under the Constitution enjoy, in this respect, whatever measure of liberty was enjoyed by the inhabitants of the colonies before the adoption of the Constitution. In order to discover the extent and nature of this liberty, one must examine the provisions of the common law concerning it. There are, however, certain cases of privilege to which this law does not apply. Under the law there are two classes of cases, or two classes of utterances that are privileged. The privilege in one class of cases is absolute; that is to say, such cases are completely exempt from the restrictions of the law regulating freedom of speech and of the press. The cases of absolute privilege are:

1. Utterances by members of Congress in any speech or debate in either house.

2. The testimony given by a witness in the course of judicial proceedings.

3. Statements by a juror in the jury room concerning the witnesses or the parties in the case.

4. Complaints of criminal actions made in order to bring the supposed criminal to trial, as also the preliminary information for the instruction of the officers of the court.

5. The pleadings and other papers prepared for the trial, in so far as their statements relate to the matter in controversy.

6. The official utterances of the President of the United States, the governors of the States, the judges of the courts, and all officers performing judicial functions.

7. The remarks of persons presenting a case before a court, when confined to the matter of the case in hand and not uttered for the purpose of detraction and abuse.

8. Truthful reports of proceedings in legislative bodies, in their committees, and in the courts, provided always that

these reports are confined to the proceedings and do not introduce defamatory statements not contained in the proceedings themselves.

In the other class of cases of privilege, the exemption from the restraints of the law is conditional and is dependent on motive. The most conspicuous of such cases are:

1. Criticism of officers of the Government and of candidates for office. The reason of this exemption lies in the fact that the citizens should know the qualities of the officers in charge of their affairs and the qualities of those who are presented as candidates for office. This criticism is legitimate and privileged, provided the critic speaks of what he knows or believes, has only the public interest in view, and speaks without malice.

2. Discussion of public affairs. Popular government is in a large measure guided by public discussion, and in order that this discussion may be as completely impartial as possible and free from the directing hand of official authority, it is exempted from legal restraints as long as it is conducted with moderation and with a view to the public welfare. From fear lest there should be an appearance of official dictation, the liberty which it was proposed to confirm in this matter has sometimes been allowed to degenerate into an unwholesome license.

3. Reviews of books, magazines, and pamphlets. It is presumed that if publications of this kind are such as ought to be issued, no injury will be done by presenting their distinguishing characteristics; and if they are not such as ought to be issued, some good may be done by hastening their extermination.

The restriction in cases where there is a conditional exemption is applied through the courts. If a person thinks himself injured by a given publication, he may bring suit for damages; but no damages will be awarded if it is shown in the defense that only the truth about the plaintiff has

been published. When, however, a criminal prosecution is instituted on the charge that the specified publication is injurious to society, proof that only the truth has been published is not an adequate defense; for although a publisher may have confined himself to well-ascertained facts about a certain person or certain persons, yet these facts may be of such a character as to make their publication a crime against society. The injury complained of in this instance is an injury to the public; "and when private reputation and conduct are needlessly dragged before the public to the disturbance of the peace of society, the public injury may be as great when only the truth is spoken, as when the publication is wholly untrue. The truth, therefore, is not in all cases a defense to a prosecution for criminal libel; but the publisher, in addition to the truth, must show that he made the publication with good motives and for justifiable ends."[1]

Topics.—Freedom of speech defined.—Existence of this freedom assumed by the Constitution.—Determined by the common law.—Cases of absolute privilege.—Cases where exemption from restraint depends on motive.—Redress through the courts.

References.—Bryce, *American Commonwealth*, ii, 350; Dawes, *How We Are Governed*, 306; Ford, *American Citizen's Manual*, Part II, 8; Hinsdale, *American Government*, 352; Hart, *Actual Government*, 28; Lalor, *Cyclopædia*, iii, 319.

133. The Right to Vote.—The right to vote is the right to participate in the political affairs of the nation. This right is created by law. Of late it has been frequently affirmed that it is a natural right. A person who holds this opinion, however, finds that it is the positive law of the nation to which he belongs that includes him among those on whom it confers this power, or excludes him from them.

[1] Cooley, *Constitutional Law*, 280.

In this view of the case the doctrine that the right to vote is a natural right does not appear to have great practical significance. As a matter of fact, wherever this power is held, it exists under a definite legal provision which holds no necessary relation to the alleged natural right. The right to vote is conferred not primarily for the benefit of the individual citizen. The benefit that comes to him comes largely through the improvement of the community in which he exercises this right. If, therefore, there are certain persons whose influence, if they were endowed with this power, would be detrimental to the welfare of society, the state that is wisely conducted will, if possible, so frame the law of suffrage as to exclude them from the enjoyment of this privilege.

In the United States it is the several States that determine who shall vote. In this matter they act without any restraint or limitation, except that imposed by the fifteenth amendment to the national Constitution, which prevents them from denying or abridging the right of any citizen of the United States to vote on "account of race, color, or previous condition of servitude." In Federal as well as in State elections only those persons are entitled to vote to whom the right has been given by a State law, and this law is usually the State constitution. The specific regulations under which this right is exercised are prescribed by the legislature of the State. Important among such regulations is that which requires a registration of all voters before the day of election. The various measures of detail respecting the methods of voting, the form of the ballot, notices of the time of the election, and the manner of indicating the will of the voter on the ballot also are prescribed by the legislature.

In conferring the right to vote, the State legislative power acts arbitrarily. It presumes no natural right to vote. It recognizes only such restrictions as are imposed

by the Federal Constitution. In the beginning of the century it was provided in some of the States of the South that the voter must have a certain educational qualification. This would exclude both the ignorant negro and the ignorant white man. In this the law was general. Then an exception was made of all those persons whose grandfathers, or whose ancestors before a certain date, had had the right to vote. This exception also was general; but under it the ignorant white man and not the ignorant negro might vote.

Topics.—Right to vote created by law.—The view that it is a 'natural" right.—Aim in conferring the right.—Determination of the right in the United States.—The fifteenth amendment.—Regulations for voters.—Restrictions in the South.

References.—Bryce, *American Commonwealth*, i, 419, 484; Dawes, *How We Are Governed*, 324; Hart, *Practical Essays*, 20–57; Miller, *Lectures*, 661.

134. Equality.—In some countries it has been thought expedient to have different laws for the different social classes, but in the United States all laws are enacted to apply equally to all members of the nation. All persons enjoying civil rights enjoy the same civil rights, and all persons enjoying political rights enjoy the same political rights. This is what is meant when it is affirmed that under the Government of the United States all men are equal. From certain other points of view they appear to be unequal. As regards their physical or mental powers, their opportunities or their wealth, their power and the actual influence they exert in directing the public affairs of the nation, they are unequal; and some forms of inequality tend to increase as society grows from the simple to the more complex state. But it is the purpose of the Government to maintain equality before the law. To prevent any State, in exercising its legislative power, from violating this purpose, the fourteenth amendment to the Constitution provides that "no

State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law." There are, however, certain privileges which, when once granted, cannot be enjoyed by others. These are involved in franchises given to individual or corporate persons to do what, in the nature of things, can be done only by a few persons. When such a privilege is granted, it is presumed that the business to be performed is important for the general welfare, and that it can be more efficiently done under an exclusive franchise than in any other way. In this case, as in the case of certain ministerial officers whose services are necessary to the general welfare, the supreme governmental authority is expected to select the agency that appears to be the most efficient for the attainment of the result required.

Topics.—Indications of equality in the United States.—Signs of inequality.—Aim of the Government in this matter.—The fourteenth amendment.—Privileges that are necessarily monopolies.

References.—Bryce, *American Commonwealth*, ii, 744–747; Ford, *American Citizen's Manual*, Part II, 17, 18; Hart, *Actual Government*, 32.

135. Nature and Liberty.—An appeal is sometimes made to nature as offering an argument in favor of liberty; but the term "nature" is so vague that such an appeal bears no very definite meaning. If it is affirmed that man ought to be free because freedom is his natural inheritance, the assumption on which the affirmation rests is not sufficiently well established to make it the basis of a valid argument. It is nearer the truth to say that man inherits a position of dependence, and that the striving of the individual in his development, as of the race in its development, is toward

liberty. The liberty which we think of in connection with society is not a natural condition, but it is acquired as a result of progress under an enlightened government. Within the meaning of the term we recognize civil liberty and political liberty, both defended by authority under the provisions of law. Any form of liberty that is conceived to exist not under law is only the liberty of the wild beast. It means merely that the possessor of it may take for his own enjoyment anything which he is not prevented from taking by the limitations of his agility, courage, strength, or cunning. This form of liberty, since it is conceived of as under no law, must be found, if anywhere, without the limits of the social organization. True liberty appears only when government arises to protect the individual person in the possession of his property, to defend him from the encroachments and assaults of his fellows, and to secure him in the enjoyment of all those advantages which tend to his intellectual emancipation and development.

Topics.—"Liberty by nature."—Liberty a result of enlightenment.—Liberty under law or liberty of the wild beast.

References.—Lowell, *Essays*, 136–189; Cooley, *Constitutional Law*, 221–226.

136. Civil and Political Liberty.—Civil liberty is a condition in which the individual members of a society enjoy such rights, and are under such obligations, as permit them to seek effectively their own advantage, and prevent their actions from becoming injurious to other persons, or impeding social progress. Political liberty may be said to exist in a community when the individual members of that community possess the right to take part in making the laws. Civil liberty may exist without political liberty, but the enjoyment of political liberty by a large part of the community appears to be the surest guarantee of the continuance of civil liberty.

Topics.—Definition of civil liberty.—Political liberty.

References.—Hart, *Actual Government*, 23–33; Cooley, *Constitutional Law*, 221–226.

137. Religious Liberty.—The establishment of religious liberty is one of the important steps taken by the founders of the American Government. It was especially important on account of its influence in emancipating the thought of the people, and in making them really free. The original constitutional provisions touching this subject were only limitations on the powers of Congress. The first of these provisions declared that "no religious test shall ever be required as a qualification to any office or public trust under the United States"; the second, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Notwithstanding these provisions, the several State governments were free to take such action with respect to religion as seemed to them desirable. But the attitude assumed in the Constitution expressed the views of the citizens of the States; and these views determined the action of the States, which have without exception established constitutional guarantees of religious freedom. These guarantees appear to protect adequately the individual citizen in worshiping as his conscience or his taste may dictate. The following is a general statement of the constitutional guarantees of the States:

"1. They established a system, not of toleration merely, but of religious equality. All religions are equally respected by the law: one is not to be favored at the expense of others, or to be discriminated against; nor is any distinction to be made between them, either in the laws, in positions under the law, or in the administration of the government.

"2. They exempt all persons from compulsory support of religious worship, and from compulsory attendance upon the same.

"3. They forbid restraints upon the free exercise of religion according to the dictates of conscience, or upon the free expression of religious opinions."

Topics.—Original constitutional provision touching religious liberty.—Position of the State governments in this matter.—State constitutional guarantees.

References.—Dawes, *How We Are Governed*, 303; Ford, *American Citizen's Manual*, Part II, 11; Hinsdale, *American Government*, 352, 353; Hart, *Actual Government*, 27.

138. "Due Process of Law" and "Law of the Land."—The phrase, "due process of law," as it appears in the fourteenth amendment has essentially the same meaning as the phrase, "law of the land." In setting forth the meaning of this phrase, jurists have shown that it is not always synonymous with a legislative act. Webster said: "Everything which may pass under the forms of an enactment is not to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments, decrees, and forfeitures in all possible forms, would be the law of the land." According to Justice Story, "due process of law" means such an exercise of the powers of government as the settled maxims of law permit and sanction. When, for instance, a citizen has been charged with an offense which places his life and liberty in question, it is required that he shall be dealt with by due process of law; that is to say, there must be judicial proceedings; there must be an accusation, a hearing before an impartial tribunal, with proper jurisdiction; and there must be a conviction and judgment before the punishment can be inflicted."[1]

"By the 'law of the land' is most clearly intended the general law—a law which hears before it condemns, which

[1] Story, *On the Constitution*, 4th ed., § 1943.

proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property, and immunities under the protection of the general rules which govern society."[1]

Topics.—Meaning of phrase, "due process of law."—Meaning of "law of the land."

References.—Goodnow, *Comparative Administrative Law*, ii, 116; Hinsdale, *American Government*, 310, 363; Lowell, *Essays*, 85; Miller, *Lectures*, 664–666; Webster's *Works*, v, 487; Story, *On the Constitution*, fourth edition, §§ 1943–1946.

139. "A Man's House Is his Castle."—Not the least important of the rights enjoyed by citizens of the United States is the right to hold their houses free from unregulated invasion either by the Government or by private persons. The third and fourth amendments to the Constitution deal directly with this subject. The third amendment provides that "no soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law." This provision was framed not to set aside any evil existing at the time it was adopted, but to prevent the revival of a practice which had formerly been used as a means of oppression.[2]

This practice "at best . . . is an arbitrary proceeding; it breaks up the quiet of home; it appropriates the property of the citizen to the public use without previous compensation, and without assurance of compensation in the future, unless the law shall have promised it. It is difficult to imagine a more terrible means of oppression than would be the power in the executive, or in the military commander, to fill the house of an obnoxious person with a company of soldiers, who shall be fed and warmed at his expense, under the direction of an officer accustomed to the exercise of

[1] Webster, *Works*, v, 487.

[2] See §§ 126, 127.

discretionary authority within the limits of his command, and in whose presence the ordinary laws of courtesy, not less than the rules of law which protect person and property, may be made to bend to whim or caprice." [1]

However effective for oppression may be the power to quarter soldiers in a private house without the consent of the owner, the ordinary citizen sees a greater danger in the liability of having the privacy of his house invaded either by private persons or by officers of the law under the pretext of making an official search of the premises. To defend him against this danger, the fourth amendment was adopted. It declares that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." The point of vital importance in this matter is the distinction between reasonable and unreasonable searches. In order that a search may be considered reasonable and thus be permitted under the law, it is required that a warrant shall be issued by a properly empowered magistrate to an officer authorized to serve it. Before the warrant is issued, the magistrate must receive satisfactory evidence that facts exist justifying its issue under the law; and the place to be searched, together with the persons or things sought, must be pointed out. The warrant must contain a particular description of the persons or things desired and the place to be searched. Ordinarily any search made without a warrant complying with these conditions will be regarded as unreasonable and prohibited by law; but conditions may exist under which without a warrant a man's house may be forcibly entered. This may be done for the sake of arresting a person for

[1] Cooley, *Constitutional Law*, 209.

treason, felony, or breach of the peace, when it is known that he is concealed therein. It may be done also in certain other cases; but generally the owner may forcibly prevent any person not having the proper warrant from entering and may, if necessary, carry his defense even to taking the life of the intruder.

The fact that a warrant describes specifically the persons or things sought and the place to be searched prevents it from becoming an instrument of oppression. Formerly in England a *general warrant* was issued, which neither named nor described the person to be arrested nor defined the place to be searched. This form of warrant gave the ministerial officer full discretion as to the person or persons who might be taken, and unlimited authority with respect to places that might be searched. Warrants of this kind, inasmuch as they convey unrestricted power within certain limits, were almost always followed by acts of oppression; and the practice of issuing them was a grievance of which the people complained. They are no longer used, and since the decision in Wilkes's case[1] they have been held to be illegal. But in a few exceptional cases a peace officer may make arrests without a warrant.

Topics.—Freedom from unregulated invasion.—Practice of quartering soldiers in private houses.—Invasion of one's house by private persons.—Fourth amendment.—Reasonable and unreasonable searches.—Definition of a warrant.—Forcible entry of one's house.—General warrant.

References.—Ford, *American Citizen's Manual*, Part II, 15, 16; Hinsdale, *American Government*, 354.

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[1] John Wilkes was arrested on a general warrant for "a false, scandalous, and seditious libel" in 1763. Later he was released in virtue of his privilege as a member of Parliament. Subsequently he was several times re-elected and expelled. His final triumph established the privileges of members and the right of electors to select their representatives freely.

140. Slavery.—The progress of slavery and the discussion of its legal aspects were for several decades conspicuous features of the political life of the nation. The Civil War and the adoption of the thirteenth amendment introduced a new period. Slaves became free and acquired the rights of citizens. The Louisiana civil code before the emancipation thus defined a slave as he was then: "He is one who is in the power of a master to whom he belongs. The master may sell him, dispose of his person, his industry and his labor; he can do nothing, possess nothing, nor acquire anything, but what must belong to his master." The events relating to the origin and development of the institution of slavery and the views expressed by jurists and politicians concerning it are a part of the history of the United States; but a statement of the existing Government of the country regards these events and these views as belonging to an historical episode that is closed. Traces of their influence may be discovered in the present; but the political life of the nation proceeds now on the fact that all men within the jurisdiction of the Government are free, and that they have been confirmed in their freedom by the solemn declaration of the nation, uttered in a constitutional amendment. This amendment affirms that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Thus from the position of chattels subject to purchase and sale, slaves have been advanced to the position of free men. Under the law they are now factors in the political life of the nation, like other free men. But while all free men are in theory equal under the law, they are not all equally powerful in the exercise of their common political rights. This form of inequality exists even among those whose ancestors have all been free. Those who were formerly slaves, and their descendants, are handicapped in this mat-

ter by their lack of cultivation and self-control and by the prejudice to which they are subjected by reason of the servile position of their ancestors.[1]

Topics.—Slavery discussion.—The Civil War.—Definition of slave.—The thirteenth amendment.—Phases of inequality.

References.—Bryce, *American Commonwealth*, ii, 12–16; Hinsdale, *American Government*, 357–367; Lalor, *Cyclopædia*, iii, 725; Macy, *Our Government*, 207, 208.

141. Points in the History of Legislation Concerning Slavery.

1787. Constitutional provision: "The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year 1808; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."

1787. The Ordinance for the government of the territory of the United States northwest of the River Ohio provided that "there shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: *provided*, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid."[2]

1794. Slave trade to foreign countries was prohibited.

1807. The importation of slaves was prohibited, the act to take effect on the first of January, 1808.

1820. The slave trade was declared to be piracy, and made punishable with death.

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[1] See § 133.

[2] Article 6.

1820. The enabling act for Missouri was passed, providing that Missouri might become a State, but under the condition that slavery should be forever excluded from all other parts of the Louisiana Purchase lying north of the southern limit of the State, or latitude 36° 30′.

1854. An act was passed organizing the Territories of Kansas and Nebraska and providing that they might be admitted as States at the proper time with or without slavery, thus setting aside the provisions of the so-called Missouri Compromise and declaring them void.

1862. The first proclamation concerning the emancipation of the slaves was issued by President Lincoln. This was a call and a warning. By it President Lincoln called to the inhabitants of the revolted States to lay down their arms and return to the position of loyal citizens. Through it he moreover warned them that unless they resumed their allegiance to the Government of the United States before the first of January, 1863, he would declare their slaves free men and use the forces of the army and the navy to uphold this declaration. The only evident effect of this proclamation was that the president of the Confederacy ordered certain measures of retaliation.

1863. The emancipation proclamation was issued on January 1, 1863. This proclamation designated the States and parts of States in which it was to apply, and enumerated the places that were to remain as if it had not been issued. It ordered and declared "that all persons held as slaves within said designated States and parts of States are, and henceforward shall be, free; and that the executive government of the United States, including the military and

naval authorities thereof, will recognize and maintain the freedom of said persons." This proclamation was issued not by virtue of any power specifically granted to the President by the Constitution, but "by virtue of the power in him vested as commander in chief of the army and navy of the United States in time of actual armed rebellion against the authority and government of the United States, and as a fit and necessary war measure for suppressing said rebellion." The authority of the President as commander in chief did not extend practically within the lines of the forces in revolt; but even if the status of the slaves there was not materially affected, the proclamation was at least an announcement that this authority would become effective as fast as territory was brought within the lines of the Federal forces.

1865. The thirteenth amendment to the Constitution was adopted, providing that "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

1870. The fifteenth amendment to the Constitution was adopted, providing that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Topics.—Importation of slaves.—Ordinance of 1787.—Slave trade.—Enabling act for Missouri.—Kansas and Nebraska Bill.—Emancipation.—Thirteenth amendment.—Fifteenth amendment.

References.—Bryce, *American Commonwealth*, i, 55, 472, 475; Dawes, *How We Are Governed*, 320–324; Hinsdale, *American Government*, 325, 326, 332, 357–367; Lalor, *Cyclopædia*, i, 838; iii, 540; Miller, *Lectures*, 406, 456.

FOR ADVANCED STUDY

Personal Rights.—Burgess, *Political Science*, i, 174–252; Cooley, *Constitutional Law*, Chap. IV, §§ 3, 14; Chaps. XII–XVI; Cooley, *Constitutional Limitations*, Chaps. IX–XIII; H. von Holst, *Constitutional Law*, §§ 72–78, 84–87; Hinsdale, *American Government*, Chaps. XLVII, XLVIII.

Liberty.—Lieber, *On Civil Liberty and Self-Government*, Chaps. VI, VII; Mill, *On Liberty;* Hurd, *Law of Freedom and Bondage;* Cooley, *Constitutional Limitations*, Chap. X; Hill, *Liberty Documents*, Chaps. VIII, XXI–XXIII.

The Development of Religious Liberty.—Eliot, *American Contributions to Civilization*, Nos. 1, 2, 15; Bryce, *American Commonwealth*, ii, Chaps. CVI, CVII; Lecky, *Democracy and Liberty*, i, 540–557; Jennings, *Eighty Years of Republican Government*, Chap. IX; H. von Holst, *Constitutional Law*, §§ 94–98; Wright, *Practical Sociology*, §§ 38, 39.

The Emancipation of the Slaves.—Nicolay and Hay, *Lincoln*, vi, Chap. VIII, XIX; Burgess, *Civil War*, ii, 97–101; Morse, *Lincoln*, ii, 116–121; Rhodes, *History of the United States*, iii, 157–163.

The Right to Vote.—Lalor, *Cyclopædia*, iii, 822–833; See bibliography on page 833.

Magna Charta.—Consult the text of the charter and the discussion in Stubbs's *Constitutional History of England.*

Slaves as "Contraband of War."—Nicolay and Hay, *Lincoln*, iv, 387–396; Rhodes, *History of the United States*, iii, 466–468.

Changes in the Federal Constitution.—Cooley and others, *Constitutional History as Seen in Constitutional Law;* Burgess, *Reconstruction and the Constitution*, 73–79; Bryce, *American Commonwealth*, abridged edition, 271–284.

Equality.—Harris, *Progress and Inequality;* Moses, *Democracy and Social Growth*, 1–35.

CHAPTER IX

THE CONTINENTAL TERRITORIES

142. The Government of the Northwestern Territory.—At the close of the War of Independence the General Government did not possess, or exert direct control over, any territory whatsoever. All lands embraced within the boundary fixed by the treaty of 1783 were covered by the claims of the States. The territorial claims of several of these States—New Hampshire, Rhode Island, New Jersey, Delaware, and Maryland—did not reach beyond the region now occupied by New England and the middle and southern Atlantic States. The rest of the territory between Florida and the Lakes was claimed by the other States. An important step in the development of the dignity and independence of Congress was the cession of the territory bounded by the Great Lakes and the Mississippi and Ohio rivers to the General Government. Such a cession had been contemplated before the end of the war, as may be seen by the following resolution, submitted to Congress in October, 1777:

"That the United States in Congress assembled shall have the sole and exclusive right and power to ascertain and fix the western boundary of such States as claim to the Mississippi or the South Sea, and lay out the land beyond the boundary so ascertained into separate and independent States, from time to time, as the numbers and circumstances of the people thereof may require."

Maryland alone voted for this resolution. Other resolutions of a somewhat similar import were considered in connection with the adoption of the Articles of Confederation; but they were not carried, and the failure to make any satisfactory provision respecting the northwestern lands caused Maryland to withhold her assent to the Articles of Confederation until 1781. The beginning of a solution of the problem of a central Government appeared, when, in 1780, the legislature of New York provided: (1) That the delegates of that State in Congress should restrict the boundaries of the States in the western parts, as they might think to be expedient, with respect either to the jurisdiction or the right of the soil, or both; (2) that the territory so ceded should inure to the benefit of the States in the Union; (3) that if any lands so ceded should remain within the jurisdiction of the State, they should be surveyed and disposed of only as Congress might direct.

This was the first important step taken toward the cession of territory to the Federal Government. It set an example for the other States to follow. The policy of the Federal Government with respect to the lands that had been or might be ceded to it was indicated in a resolution adopted by Congress, October 10, 1780, in which it was announced that these lands would "be disposed of for the common benefit of the United States, and be settled and formed into distinct republican States, and that these States would become members of the Federal Union, and have the same rights of sovereignty, freedom, and independence as the other States."

Connecticut was the last of the States to cede its western lands. Its "deed of release and cession" was authorized, May 11, 1786. This action completed the title of the Federal Government to the lands that came to be known as the Northwestern Territory; but it left the tract known as the Western Reserve in the hands of Connecticut. In the

course of the negotiations respecting these cessions, four different suggestions for the disposition of the northwestern lands were made:

1. That the claimant States should retain them for their own exclusive use.

2. That the lands or their proceeds should be distributed, in whole or in part, among the States, leaving the jurisdiction in the hands of the claimant States.

3. That Congress should assert the sovereign power of the United States over them, without waiting for cessions.

4. That they should be ceded by the claimant States to the United States.

The cessions having been made, in accordance with the fourth suggestion, Congress undertook to give this region a political organization. This was done by the passage of the Ordinance of 1787, which was entitled "An ordinance for the government of the territory of the United States northwest of the river Ohio."[1] This ordinance "was a constitution for the territory northwest of the river Ohio," and it was at the same time "a model for later legislation relating to the national Territories." The territory was recognized as one district for the purpose of temporary government; but Congress could divide it into two districts later, if this appeared to be expedient. The second section of the ordinance established rights of inheritance for the inhabitants of the district. It provided that landed estates belonging to persons dying intestate should be divided among the children of the intestate; or, if none, among the next of kin, in equal shares.

The Government created by this ordinance consisted of a governor, a secretary, three judges, a legislative council, and a house of representatives. These last two houses and the governor constituted the general assembly.

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[1] See APPENDIX, page 371.

The governor was appointed by Congress for a term of three years. It should be remembered in this connection that the government of the Northwestern Territory was organized before the adoption of the Constitution. The Congress was, therefore, the sole authority of the Union. Hence, as there was no President, Congress made appointments, thus exercising both legislative and executive power. The governor of the Territory was required to have a freehold estate in the district of at least 1,000 acres of land. He was the commander in chief of the militia, and was empowered to appoint all officers "below the rank of general officer." He might also appoint, before the organization of the general assembly, such magistrates and other civil officers, in each county or township, as he should find necessary for the preservation of peace and good order in the same.

The secretary and the judges were appointed by Congress; the secretary for a term of four years, the judges for an indefinite term, as long as they might be able to render satisfactory service. Each of these officers was required to live in the Territory, and to have a freehold of 500 acres of land. Two of the judges might form a court having common-law jurisdiction. The governor and the judges, or a majority of them, might adopt and publish as provisional laws of the district such laws of the original States, criminal and civil, as might be necessary. These provisional laws should remain in force in the Territory until the organization of the general assembly, unless disapproved of by Congress.

The district legislature was to be organized as soon as there were 5,000 free mature male inhabitants in the district. The representatives were to be elected from the "counties or townships," one for each 500 male inhabitants; and each representative was required to have been a citizen of the United States three years, or to have resided

in the district three years, and to have 200 acres of land in the district. The elector was required to have 50 acres of land, and to have been a citizen of one of the States, or a resident in the district for two years. The representatives were elected for a term of two years.

The governor and the house of representatives were two of the elements of the general assembly. The third element was a legislative council. This body consisted of five members, holding office for five years, unless sooner removed by Congress. The members of the legislative council were appointed by Congress from a list of ten persons nominated by the house of representatives of the district. In case of a vacancy, Congress appointed one of two persons nominated by the same house of representatives. Each member of the council was required to possess a freehold of 500 acres of land in the district. The general assembly thus constituted made laws for the district; and no bill or legislative act could be of any force without the governor's assent. The governor of the Northwestern Territory thus held the power of an absolute veto, and it is noteworthy that this power was not conferred upon either the President or any governor of a State.

The Ordinance of 1787 ends with six articles that may be called a bill of rights or constitutional guarantees. These articles declare and confirm to the inhabitants freedom of worship, the benefits of writs of *habeas corpus,* trial by jury, judicial proceedings according to the common law, and moderate fines. They forbid cruel or unusual punishments, and the taking of one's liberty or property, but by the judgment of his peers, and in pursuance of the law of the land. They provide that schools shall forever be encouraged; that faith shall be observed toward the Indians; and that the property of the Indians shall not be taken without their consent. They affirm that the inhabitants shall be subject to the Articles of Confederation and the ordinances of

Congress; that the territory of the district may be divided into not less than three nor more than five States. The sixth article prohibits slavery, but provides that fugitive slaves may be returned to their masters in other States.

The Old Northwest has been divided; and the States of Ohio, Indiana, Illinois, Michigan, Wisconsin, and Minnesota have been formed out of its territory. The Ordinance of 1787 has ceased to be in force; but this noteworthy organization of a colonial dependency continues to be of great historical importance. It has furnished a model for later territorial governments in lands that have been acquired since the treaty of 1783. The successful management of the Territories that earlier or later have occupied a large part of the area of the United States has been due to the existence of this excellent model and the good sense of legislators in following it.

Topics.—Western lands owned by States.—First cession to General Government.—Early resolution in Congress.—Maryland's attitude.—Resolution by New York, 1780.—Congressional resolution, 1780.—Action by Connecticut.—The Western Reserve.—Four proposals respecting northwestern lands.—Ordinance of 1787.—Governmental organization provided.—The bill of rights in the ordinance.—States formed from the Northwestern Territory.

References.—Hinsdale, *The Old Northwest*, 243, 268; Poore, *Charters and Constitutions*, i, 431; Hart, *Actual Government*, 23, 364, 365; Fiske, *Civil Government*, 90, 263; McLaughlin, *History of the American Nation*, 223.

143. The Status of Territories.—While Congress was negotiating with the several States for a cession of the western lands claimed by these States, Maryland stipulated that the western territory "should be considered as a common property to be parceled out by Congress into free, convenient, and independent governments, in such manner and at such times as the wisdom of that assembly shall hereafter

direct." This stipulation was made in December, 1778. In October, 1780, Congress adopted a resolution providing that the ceded territory should be "formed into distinct republican States which should become members of the Federal Union and have the same rights of sovereignty, freedom, and independence as the other States." This resolution indicated a policy favoring the ultimate extension of the system of States to the unsurveyed regions of the West. It forecast the extension of the Federal Government. New States were to be formed within the limits of the ceded lands, but the new political societies had to pass through a probationary period of territorial organization and dependence before they could become States. The first stage of the history of this organization was that indicated in the Ordinance of 1787, described in the preceding section. Since the adoption of the Constitution, and thus under the present Federal Government, the organic law of a Territory is the United States statute which establishes the Territory and provides for its government. Each statute of this kind passed on organizing a new Territory has provided that "there shall be established within the said Territory a government in all respects similar to that provided by the ordinance of Congress passed on the thirteenth day of July, 1787, for the government of the territory of the United States northwest of the river Ohio, and the inhabitants thereof shall be entitled to and enjoy, all and singular, the rights, privileges, and advantages granted and secured to the people by the said ordinance." Such a statute holds essentially the same relation to the government of the Territory that a State constitution holds to the government of the State. Moreover, the political position of a Territory is essentially the same as that of a British colony; for the organic law of the colony is an act of Parliament. The organic law of Canada is a British statute. The several Territories that have existed under the United States Government have

existed practically as colonial dependencies, to which Congress has granted certain powers of self-government.

The members of the new communities formed in the territory ceded by the original States were not known as colonists, and thus they escaped whatever unpleasant suggestions might have come from such a designation. They were not led to think of themselves as dependents. The political societies to which they belonged were given the colorless designation of Territories. The colonial policy here carried out by the United States differed from the contemporary colonial policies of other governments in two particulars: it allowed the inhabitants a larger measure of political liberty, and it held out to the Territory the prospect of becoming a State. The idea that the status of a Territory is transitory, that it is the first step toward statehood, has hitherto been regarded as the characteristic feature of the colonial system of the United States. It was easy to carry out practically this idea as long as the population of the Territories was made up of emigrants from the States, and as long as the lands they occupied were contiguous to the lands of the States; for through this process the Territories came to be occupied by inhabitants not differing in any essential particular from the inhabitants of the rest of the Union. They acquired in many cases, doubtless, manners and customs peculiar to the frontier, but the circumstances of their life tended to strengthen rather than to weaken their sentiments of liberty and their democratic spirit of equality.

But when colonial territory far removed from the American continental possessions of the nation is largely populated by members of an alien race, whose antecedents and ideas, traditions and customs, differ widely from those of the bulk of the nation, the colonial question for the United States assumes a new aspect. It is no longer possible to emphasize as heretofore the idea that the Territory will

ultimately grow into a State. The colonial policy carried out with respect to Michigan when it was a Territory occupied by inhabitants who had emigrated from the older States was a policy somewhat different from that suggested by the circumstances of the Philippine Islands. The inhabitants of the islands have no race affiliation with the bulk of the inhabitants of America, and they are without that political education and experience which have finally made popular government possible in England and the United States.

Topics.—Congressional resolution as to new States.—Organic law of Territory.—Political position of a Territory.—Territory compared with British colony; with insular dependency.

References.—Hart, *Actual Government*, 31, 32, 364–373; Bryce, *American Commonwealth*, 122, 346, 552–559; Miller, *Lectures*, 638.

144. The Organization of Territories.—When the first Territories were organized, they had few inhabitants; and these lived in small, isolated settlements or were scattered throughout the wilderness. The kind of government that existed in the several States was not suited to the conditions of the new country, and by the Ordinance of 1787 a new form was created. This became the model for the later territorial governments.[1] Its fundamental feature was dependence on the Federal Government. The governor, the secretary, and the judges were at first appointed by Congress; but later, under the Constitution, after the establishment of the presidency, they were appointed by the President. The governor and the judges might adopt from State statutes provisional laws during the period before the mature male population had increased so as to number 5,000. After this there was to be created a territorial legislature, composed of a legislative council and a house of

[1] See page 251.

representatives. The legislature in this form possessed extensive legislative authority covering "all rightful subjects of legislation," including the granting of charters of incorporation, endowing institutions of learning, and providing for the exercise of the right of eminent domain.[1] The power of absolute veto was held by the governor under the Articles of Confederation, but under the Constitution the absolute veto was not given either to the President or to any territorial or State governor. Under this organization the territorial legislature might appoint a delegate who should have the right to speak in Congress but not the right to vote. In some of the Territories, however, the delegate was chosen by the people. The details of organization varied in some instances widely from the original model.

The first act providing a government for Louisiana simply empowered the President to appoint all civil, military, and judicial officers of the new Territory, to define their duties, and to support them with the army and navy of the United States. Under the later organization of this Territory there was a governor appointed by the President for three years, and a secretary appointed for four years. There was also a legislature composed of the governor and a legislative council of thirteen members. The judicial power was exercised through a system of courts in which the judges were appointed for four years, and the people enjoyed the right of trial by jury and the privilege of bail. The legislature of the Territory of Missouri, formed in 1812, consisted of a governor, a legislative council, and a house of representatives. The members of the house of representatives were elected by the people. The legislative council was composed of nine members appointed by the President from a list of eighteen nominated by the house of representatives of the Territory.

[1] See § 130.

In the later Territories the legislative council is composed generally of twelve persons, and the house of representatives of twenty-four, each elected for two years by voters, whose right to vote is determined by the territorial statutes. There is also a supreme court of the Territory, consisting of three or more judges appointed by the President. This court administers such Federal laws as are properly applicable to the Territory, and also the statutes created by the territorial legislature. The inhabitants enjoy the same civil rights as other American citizens, but their political rights are limited. They have no part in the national Government, for their representatives in Washington have no vote. The people of the Territories may not vote at any presidential election. Their governors and judges are appointed by the President, and Congress may set aside any statute passed by their legislature. Congress, moreover, fixes the time and manner of their transformation into a State.

Topics.—Source and extent of power of territorial government.—Delegates to Congress.—First law providing for government of Louisiana.—Later government of Louisiana.—Territory of Missouri.—Government of later Territories.—Rights of the people.

References.—Bryce, *American Commonwealth*, i, 553; Lalor, *Cyclopædia*, iii, 914–920; Cooley, *Constitutional Law*, 36, 37, 52, 53, 136, 164–168.

145. Power of Congress over Territories.—Ever since the States ceded to the General Government whatever rights they had to western lands, Congress has exercised the power to govern these lands under territorial organizations. It may be still a question whether this power is based on a mere proprietary right, like the right which a community may have in lands, or on the right of political dominion which a sovereign necessarily exercises over all territory and inhabitants that lie within the limits of its jurisdiction.

Whatever may be the result of inquiry into this question, Congress has from the beginning exercised supreme control over all lands that have been added to the Union and not to any State. Not only has the Government of the United States acted on the supposition that it might acquire territory, but its power and right in this matter have been affirmed by the Supreme Court. "The Constitution confers absolutely on the Government of the Union the powers of making war and of making treaties; consequently that Government possesses the power of acquiring territory either by conquest or by treaty." The territory having been acquired, the duty of controlling it devolves upon Congress; for, according to the Constitution, "the Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States." Congress, then, possesses the power to legislate for the Territories; and this power is exclusive. "It may be exercised directly, or delegated to local governments set up by Congress and retained under its supervision." This position has been recognized in the practice of the General Government, and it is upheld by the decisions of the Supreme Court. If Congress possesses the unquestioned power to govern such Territories, it would seem to be idle to affirm that they must be transformed into States. The determination of the time when a Territory shall be converted into a State is with Congress, and Congress cannot be compelled to act. There is, moreover, no other way besides that controlled by Congress by which a Territory may become a State. The language of the Constitution in this matter is permissive: "New States may be admitted by Congress into this Union." If Congress in its wisdom finds that it is not advisable to transform a Territory into a State after fifty years, there appears to be no constitutional power to override its decision, if it adheres to this view after four hundred years.

Topics.—Control of Federal territory in the past.—Congressional power exclusive.—As to transformation of Territories into States.

References.—Miller, *Lectures*, 638; Hart, *Actual Government*, 372; Cooley, *Constitutional Law*, 164–168.

146. Changing a Territory into a State.—It is expected that a continental Territory will be changed into a State as soon as the number of inhabitants and other conditions warrant conferring upon it the powers and liberties that belong to a State in the Union; but Congress has complete discretion in this matter and may decide to admit or not to admit a Territory, as it may appear politically advantageous to the party dominant in Congress for the time being. It may happen that a Territory may have a sufficient number of inhabitants to make its admission desirable, but still not be admitted because of their ignorance or lawlessness or unpromising traditions. New Mexico remained a Territory even after its inhabitants numbered 327,301. Arizona had a population of at least 204,354 before it became a State. A large part of the inhabitants in these cases were of a mixture of Spanish and Indian blood, and not well suited by character or tradition to establish and develop republican institutions. Usually, in turning a Territory into a State, Congress passes an enabling act. Under this act the voters elect the members of a constitutional convention which proceeds to make a draft of a constitution. This draft having been adopted by the voters of the Territory and having thus become the constitution, the Territory is admitted to the Union as a State either by a proclamation of the President or by an act of Congress. Nevada, having formed and adopted a constitution, was admitted as a State by a proclamation of the President.

There is another method of turning a Territory into a State. In this case, the people, without a congressional

enabling act, form a constitution and elect the officers provided for by it. They then present the constitution to Congress and apply for admission as a State under this constitution. It may happen, moreover, that when a constitution has been formed, either with or without an enabling act, and presented to Congress, that body may require of the Territory certain concessions before admission. Congress may require that a portion of territory shall be yielded, or that the proposed rule of suffrage shall be changed, indicating that admission is a matter entirely under the control of Congress.

Topics.—Power to convert a Territory into a State.—Consideration delaying admission of a State.—Processes of changing a Territory into a State.

References.—Bryce, *American Commonwealth*, i, 556; Cooley, *Constitutional Law*, 169–177.

147. Texas and California.—Texas and California became States without passing through the preliminary Territorial stage. Texas was at first a part of Mexico. Under the Mexican federal constitution of 1824, it was embraced in the "state of Coahuila and Texas." Soon after the organization of this State its population was increased by immigration from the United States. In 1835 Santa Anna abolished the Mexican federal government and reduced the States to mere departments under a centralized administration. The inhabitants of Texas rebelled, organized a provisional government, framed a constitution, and proposed to defend themselves as an independent state. The independence of the Republic of Texas was acknowledged by the United States, England, France, and Belgium. A treaty of annexation between Texas and the United States was formed in 1844, but it was rejected by the Senate by a vote of 16 to 35. By a joint resolution passed by the House

and by the Senate in December, 1845, Texas was admitted as a State.

Texas, like the Hawaiian Islands later, was annexed to the United States by a joint resolution of Congress. Texas had already adopted a constitution and thus became a State immediately on its annexation.[1]

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[1] JOINT RESOLUTION FOR THE ADMISSION OF THE STATE OF TEXAS INTO THE UNION.

Whereas, The Congress of the United States, by a joint resolution approved March the first, eighteen hundred and forty-five, did consent that the Territory properly included within, and rightfully belonging to, the Republic of Texas, might be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled, with the consent of the existing government, in order that the same might be admitted as one of the States of the Union; which consent of Congress was given upon certain conditions specified in the first and second sections of said joint resolution; and whereas the people of the said Republic of Texas, by deputies in convention assembled, with the consent of the existent government, did adopt a constitution, and erect a new State with a republican form of government, and, in the name of the people of Texas, and by their authority, did ordain and declare that they assented to and accepted the proposals, conditions, and guarantees contained in said first and second sections of said resolution: and whereas the said constitution, with the proper evidence of its adoption by the people of the Republic of Texas, has been transmitted to the President of the United States and laid before Congress, in conformity to the provisions of said joint resolution: Therefore—

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of Texas shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

SEC. 2. *And be it further resolved*, That until the representatives in Congress shall be apportioned according to an actual enumeration of the inhabitants of the United States, the State of Texas shall be entitled to choose two representatives.

Approved, December 29, 1845.

The consequence of annexing Texas was war with Mexico. This war and the treaty which followed it brought to the United States the vast regions at present embraced in Utah, Nevada, Colorado, New Mexico, California, and a large part of Arizona. The rapid increase of the population of California, due to the discovery of gold, made necessary the establishment of an effective government for that region. Therefore, in the autumn of 1849, a State constitution was formed and adopted, and under it a governor and other officers were elected. These officers entered upon the performance of their duties without congressional authority and conducted the affairs of government until September, 1850, when California was admitted to the Union as a State.[1]

During this period, between the formation of the constitution and the admission of California as a State, this region belonged by treaty to the United States; but there had been no legislation organizing here a Territorial gov-

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[1] ACT FOR THE ADMISSION OF THE STATE OF CALIFORNIA INTO THE UNION.

Whereas, The people of California having presented a constitution and asked admission into the Union, which constitution was submitted to Congress by the President of the United States, by message dated February thirteenth, eighteen hundred and fifty, and which, on due examination, is found to be republican in its form of government:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the State of California shall be one, and is hereby declared to be one, of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever.

2. The said State of California is admitted into the Union upon the express condition that the people of said State, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits, and shall pass no law and do no act whereby the title of the United States to, and right to dispose of, the same shall be impaired or questioned; and that they shall never lay any tax, or assess-

ernment or authorizing the creation of a State government. A government, however, existed in fact, created and supported by the people, but had no representation whatsoever in Congress and had not received any congressional authority.

The proposition to admit Texas provoked an especially savage clash of the parties. Under ordinary circumstances, if there is a Territory, the population of which is likely to continue to present a majority for one party in its elections, that party will naturally favor its admission as a State. It will thereby gain two more senators, who may perhaps be counted on even in doubtful years. It will receive additions also to its forces in the House. The opposite party will quite naturally wish to delay the admission of such a State. While slavery existed in the South, the antagonism between the parties at that time was intensified by the strong desire of the inhabitants of the Southern States to extend their opportunities for employing the labor of slaves, and by the eagerness of the Northern people to prevent the extension of slavery. The question of the admission of Texas was a concrete case that showed how serious the antagonism of parties might become over the

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ment of any description whatsoever, upon the public domain of the United States; and in no case shall non-resident proprietors, who are citizens of the United States, be taxed higher than residents; and that all the navigable waters within the said State shall be common highways, and forever free, as well to the inhabitants of said State as to the citizens of the United States, without any tax, impost, or duty therefor; *provided*, that nothing herein contained shall be construed as recognizing or rejecting the propositions tendered by the people of California, as articles of compact in the ordinance adopted by the convention which formed the Constitution of that State.

3. All laws of the United States which are not locally inapplicable shall have the same force and effect within the said State of California as elsewhere within the United States.

Approved September 9, 1850.

admission of a State. But since the abolition of slavery, which was the principal bone of contention, the basis of antagonism respecting the admission of States has been reduced to the legitimate desire of each of the two parties to hold a majority in Congress.

Topics.—States that were never Territories.—History of Texas.—Joint resolution admitting Texas.—Consequence of annexing Texas.—Government of California, 1849, '50.—Act admitting California.—Party contention over the admission of States.

References.—McLaughlin, *History of the American Nation,* 353–358, 362–381; Lalor, *Cyclopædia,* iii, 921; Hart, *Actual Government,* 117, 344–346; Fiske, *Civil Government,* 263, 264.

FOR ADVANCED STUDY

The Original Territory of the United States.—Gannett, *Boundaries of the United States and of the Several States* (second edition, United States Geological Survey, *Bulletins,* No. 171); *Magazine of Western History,* ii, 403–423; *American Historical Review,* i, 70–87, 251–269; Twelfth Census, *Bulletins,* No. 74; Hart, Epoch Maps (revised edition, 1899).

The Territorial Growth of the United States.—*International Monthly,* iv, 794–820; Hinsdale, *Old Northwest,* Chap. X; Roosevelt, *Winning of the West,* ii, Chap. XIII; iv, Chap. VI; Hart, *Contemporaries,* iii, §§ 111–115, 143, 149; iv, §§ 11, 14, 46, 174, 185; Adams, *United States,* ii, Chaps. II–V; V, 305–315; VI, 236, 237; McMaster, *United States,* iii, 31–34; 370–375, 536–540; iv, 476–483; Schouler, *United States,* iv, 303–307, 449–451, 457–459, 470, 482–488.

Annexations.—Lalor, *Cyclopædia,* i, 93–99, 111, 460–478; Mowry, *Territorial Growth of the United States;* Donaldson, *The Public Domain,* 89–145.

The Government of the Continental Territories under Congress.—Bryce, *American Commonwealth,* i, Chap. XLVII; Roosevelt, *Winning of the West,* iii, Chap. VI; Cooley, *Constitutional Law,* 37, 38, 164–168; Ordronaux, *Constitutional Legisla-*

tion, 509–519; Farrand, *Legislation for Organized Territories;* Black, *Constitutional Law*, 20, 21, 229–235; Hart, *Contemporaries*, iii, §§ 46, 114, 135, 136; iv, §§ 17, 34, 42, 43, 186; *American History Leaflets*, Nos. 2, 17, 22, 32; Hill, *Liberty Documents*, Chap. XVI.

The Territorial Policy of the Federal Government.—Lalor, *Cyclopædia*, iii, 914–920; Judson, in *Review of Reviews*, 21 (1900): 451–456; *Harper's Monthly*, 98 (1899): 319–328; *Atlantic Monthly*, 82 (1898): 735–742.

The Northwestern Territory.—Hart, *Formation of the Union*, 107–109; Fiske, *Critical Period*, 187–199, 203–207; Hinsdale, *Old Northwest; Ordinance of* 1787, found in APPENDIX.

The Government of Territories.—Cooley, *Constitutional Law*, 36, 37; Bryce, *American Commonwealth*, Chap. XLVII; *Atlantic Monthly*, 82: 735–742; *Forum*, 29: 257–262; *North American Review*, 172: 1–22; *Outlook*, 68: 337–339.

The Annexation of Texas.—Burgess, *Middle Period*, 295–301; Schouler, *History of the United States*, iv, 303–307; Benton, *Thirty Years' View*, ii, Chap. XXIV.

Treaty of Guadalupe Hidalgo.—Text in MacDonald, 365–372; H. von Holst, *United States*, iii, 344–347; Wilson, *Division*, 152, 153; *American Historical Review*, 1905.

California before Admission.—Hittell, *History of California*, vols. I and II; H. von Holst, *United States*, iii, 284–308, 322–327, 348–358, 385–397, 400, 401; H. von Holst, *Calhoun*, 279–285; Burgess, *Middle Period*, 332–337, 340–344.

CHAPTER X

THE INSULAR DEPENDENCIES

148. The Territory of Hawaii.—After the overthrow of the monarchy of Hawaii in 1893, a republican government was organized for the islands. Under this government, negotiations were carried on looking to the annexation of the islands to the United States. A treaty of annexation was formed and submitted to the Senate by President Harrison. It was, however, withdrawn by President Cleveland. After the inauguration of President McKinley a new treaty was formed and sent to the Senate in June, 1897; but that body did not vote on it. There was a strong opposition to the treaty, and it was not certain that the Senate would give the required two-thirds vote in favor of confirming it. But there was a favorable majority in each house, and this was all that was required to pass a joint resolution of annexation. After much discussion such a resolution was passed, and it was approved by President McKinley on July 7, 1898.

This joint resolution established, in addition to other provisions, that, until Congress should provide for the government of the islands, "all the civil, judicial, and military powers exercised by the officers of the existing government in said islands shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct, and the President shall have power to remove said officers and fill the vacancies so occasioned."

In April, 1900, Congress passed "An Act to Provide a Government for the Territory of Hawaii." This act fixed the capital at Honolulu. It declared all persons who were citizens of the Hawaiian Republic, August 12, 1898, to be citizens of the United States and of the Territory of Hawaii. It provided that the laws valid in the Territory of Hawaii should be, (1) the Constitution of the United States; (2) the laws of the United States except as otherwise provided; (3) the laws of Hawaii not inconsistent with the Constitution or laws of the United States or the provisions of the Organic Act. It abolished "the offices of president, minister of foreign affairs, minister of the interior, minister of finance, minister of public instruction, auditor general, deputy auditor general, surveyor general, marshal, and deputy marshal of the Republic of Hawaii," which had existed under the previous government.

The law organizing the Territory of Hawaii established a legislature of two houses; the senate to be composed of fifteen members, and the house of representatives of thirty members. It was provided that a general election should be "held on the Tuesday next after the first Monday in November, 1900, and every second year thereafter," and that all mature male persons should have the right to vote. The senators hold office for four years and the representatives for two years. The Territory is divided into four senatorial districts, four senators being elected from the first, three from the second, six from the third, two from the fourth. Representatives are elected from six districts, four from each of three districts and six from each of three others. It is provided in the organic act of the Territory of Hawaii that the legislature may create counties, and town and city municipalities, and provide governments for them.

The executive power is vested in a governor, who is appointed by the President with the advice and consent of the Senate. There is also a secretary of the Territory.

Both the governor and the secretary are appointed for a period of four years. "In case of the death, removal, resignation, or disability of the governor, or of his absence from the Territory, the secretary shall exercise all the powers and perform all the duties of the governor during such vacancy, disability, or absence, or until another governor is appointed and qualified." The other officers provided for are an attorney-general, who in addition to his duties as attorney-general shall have certain of the powers and duties of the minister of the interior; a treasurer, who shall also have certain of the powers and duties of the minister of finance, as well as the powers and duties of the minister of the interior relating to a number of specified subjects; a commissioner of public lands; a commissioner of agriculture; a superintendent of public works; a superintendent of public instruction; an auditor; a deputy auditor; a surveyor; and a high sheriff.

The judicial power of the Territory is vested in one supreme court, circuit courts, and such inferior courts as the legislature may from time to time establish. The supreme court shall consist of one chief justice and two associate justices, citizens of Hawaii, who are appointed by the President of the United States. In addition to the Territorial courts already mentioned, there is established in the Territory a district court to consist of one judge, who is required to reside in the Territory and is called the district judge. He is appointed by the President of the United States, and in connection with his court there is established a district attorney and a marshal of the United States for the district, each holding office for six years unless sooner removed by the President. In addition to the ordinary jurisdiction of district courts of the United States, this court shall have jurisdiction of all cases cognizable in a circuit court of the United States, and shall proceed therein in the same manner as a circuit court. The powers of the judge,

district attorney, and marshal are such as are conferred by the laws of the United States upon the judges, district attorneys, and marshals of district and circuit courts of the United States.

Topics.—The annexation of Hawaii.—Hawaii made a Territory.—Laws valid in Hawaii.—The government of Hawaii: the legislative; the executive; the judiciary.—United States district court.

References.—Hart, *Actual Government*, 344–346, 367, 374; *An Act to Provide a Government for the Territory of Hawaii*, passed in April, 1900.

149. The Government of Porto Rico.—Whenever in war an invader overthrows a general, provincial, or local government, "he shall take every step in his power to reëstablish and secure, as far as possible, public safety and social order." In 1898 Porto Rico passed under the control of the United States and became the military department of Porto Rico. Over it was placed a military governor, who continued to be the chief executive of this island until the Organic Act, approved April 12, 1900, was put in force on the first of May of that year. This act provided for a civil government to succeed the military government. This government consists of a governor, an executive council, a house of delegates, and a system of courts. The governor is appointed by the President of the United States with the advice and consent of the Senate; and "he shall hold his office for a term of four years and until his successor is chosen and qualified, unless sooner removed by the President." He has the ordinary powers of a Territorial executive. He grants pardons and reprieves for offenses against the laws of Porto Rico, and respites for offenses against the laws of the United States, until the decision of the President can be ascertained. He is the commander in chief of the militia and shall at all times faithfully execute the laws.

The executive council is composed of a secretary, an attorney-general, a treasurer, an auditor, a commissioner of the interior, a commissioner of education, and five other persons, all of whom are appointed by the President for a term of four years. "In case of the death, removal, resignation, or disability of the governor, or his temporary absence from Porto Rico, the secretary shall exercise all the powers and perform all the duties of the governor during such vacancy, disability, or absence." The duties of the attorney-general are essentially the same as those provided by law for an attorney of a Territory of the United States. The executive council and another house called the house of delegates constitute "the legislative assembly of Porto Rico." Whatever local legislative power is granted by the Organic Act is held by the legislative assembly. The house of delegates consists of thirty-five members elected biennially by the qualified voters. For the purpose of their election Porto Rico is divided into seven districts, composed of contiguous territory and as nearly equal as may be in population; and each district is entitled to five members of the house of delegates.

The system of courts as at present organized includes police magistrates, municipal courts, district courts, a supreme court, and a United States district court.

Topics.—Transfer of Porto Rico from Spain to the United States.—The civil governor.—The executive council.—The secretary.—The attorney-general.—The house of delegates.—The system of courts.

References.—Hart, *Actual Government*, 19, 344–346, 367; Rowe, *Porto Rico*, see Index.

150. The Government of the Philippine Islands.—The Philippine Islands were brought under the authority of the United States by the Treaty of Paris, dated December 10, 1898. This treaty closed the war with Spain. The islands

were at first controlled by the army directed by the President through the Secretary of War. They were made a military division; and the commanding general of the division became, in the course of time, the military governor of the Philippines. In his double capacity as commanding general and military governor he directed both the military affairs and the civil administration of the islands. A few months after Manila was occupied by American troops, some of the inhabitants of the archipelago rebelled against the United States; and while this rebellion lasted, many provinces suffered great internal disorder. This confusion arose from the facts that the power of Spain was overthrown; that the political organization formed by the Filipinos failed to perform the proper functions of a government; and that the authority of the United States was acknowledged only within lines established by the army.

When the bulk of the inhabitants had assumed a peaceful attitude toward the United States, the President made provision in the spring of 1900, for establishing civil government to succeed military rule. He appointed five commissioners "to continue and perfect the work of organizing and establishing civil government, already commenced by the military authorities." On the seventh of April, 1900, he issued instructions to the Secretary of War[1] for the guidance of the commissioners in carrying out his purposes.

The functions of the Commission are indicated in the following extract from the President's instructions: "Beginning with the first day of September, 1900, the authority to exercise, subject to my approval, through the Secretary of War, that part of the power of government in the Philippine Islands, which is of a legislative nature, is to be transferred from the military governor of the islands to this commission, to be thereafter exercised by them in the place and

[1] See APPENDIX, page 402.

stead of the military governor, under such rules and regulations as you shall prescribe, until the establishment of the civil central government for the islands contemplated in the last foregoing paragraph, or until Congress shall otherwise provide. Exercise of this legislative authority will include the making of rules and orders, having the effect of law, for the raising of revenue by taxes, customs duties, and imposts; the appropriation and expenditure of public funds of the islands; the establishment of an educational system throughout the islands; the establishment of a system to secure an efficient civil service; the organization and establishment of courts; the organization and establishment of municipal and departmental governments, and all other matters of a civil nature for which the military governor is now competent to provide by rules or orders of a legislative character.

"The Commission will also have power, during the same period, to appoint to office such officers under the judicial, educational, and civil-service system, and the municipal and departmental governments, as shall be provided for. Until the complete transfer of control the military governor will remain the chief executive head of the government of the islands, and will exercise the executive authority now possessed by him and not herein expressly assigned to the Commission, subject, however, to the rules and orders enacted by the Commission in the exercise of the legislative powers conferred upon them. In the meantime, the municipal and departmental governments will continue to report to the military governor, and be subject to his administrative supervision and control, under your direction; but that supervision and control will be confined within the narrowest limits consistent with the requirement, that the powers of government in the municipalities and departments shall be honestly and effectively exercised, and that law and order and individual freedom shall be maintained."

The second phase of the civil government of the Philippines was that in which the President acted under the authority conveyed by Congress in the amendment to the Army Appropriation Act, approved March 2, 1901, which provided that all military, civil, and judicial powers necessary to govern the Philippine Islands should be vested in such person and persons and should be exercised in such a manner as the President of the United States might direct.

A third phase of the government was introduced, July 4, 1901, by the appointment of a civil governor to take the place of the military governor. The president of the Commission was made civil governor; and the four other members, with the title of secretary, were made the heads of four executive departments. The executive power was vested in the governor assisted by the heads of the four executive departments. The legislative power was vested in the Commission composed of the governor, the four secretaries, and three Filipino members. The judiciary embraced a supreme court, a number of courts of first instance, municipal courts, and justices of the peace. The courts of first instance hold a position similar to that of the county court or the superior court of a State; and from them cases may be appealed to the supreme court of the archipelago. The judgments and decrees of this supreme court, in cases involving more than twenty-five thousand dollars, may be reversed, modified, or affirmed by the Supreme Court of the United States.

The fourth phase of the government was introduced by the creation and organization of the Philippine Assembly, consisting of eighty members elected by popular vote under the election law enacted by the Commission, January 9, 1907. This body held its first meeting, and was addressed by William H. Taft, Secretary of War, on October 16, 1907. The Commission as previously organized, but now with four Filipino members, formed the upper legislative body. It has

a right to initiate legislation, to modify, amend, shape, or defeat legislation proposed by the Commission; but the power to obstruct by withholding appropriations is taken away from the Assembly. If there is disagreement as to appropriations between the Commission and the Assembly, those of the previous year will be continued. Under the existing law of elections, the elections for members of the Assembly, for provincial governors, and for presidents of the municipalities are held on the first Tuesday after the first Monday in November of the odd-numbered years.

Topics.—Rebellion and internal confusion.—The United States Philippine Commission.—President McKinley's instructions.—Phases of the civil government.—Appeal to United States Supreme Court.—The Assembly.

References.—*Reports of the Philippine Commission*, 1900, 1901, 1902; *Public Laws* and *Resolutions of the United States Philippine Commission.*

151. **Municipal Government in the Philippines.**—The existing municipal governments in the Philippine Islands were established under "A General Act for the Organization of Municipal Governments in the Philippine Islands," passed by the Commission, January 31, 1901. This act was not made applicable to the city of Manila, nor to the villages of certain wild tribes. The government of each municipality established under this act consisted of a president, a vice president, and a municipal council. These officers are elected; and the voter for them must be at least twenty-three years of age and a resident of the municipality for a period of six months immediately preceding the election, not a citizen or subject of any foreign power, and must be included in one of the following classes:

(1) Those male persons who, prior to the thirteenth of August, 1898, held a municipal office; (2) those male persons who own real property to the value of 500 pesos, or who

annually pay 30 pesos or more of the established taxes; (3) those male persons who speak, read, or write English or Spanish.

Topics.—The general Municipal Government Act.—Officers of the town.—Voters and the basis of suffrage.

References.—*Public Laws of the United States Philippine Commission, No. 82: The Municipal Code.*

152. The Government of Manila.—The government of Manila was suggested by the government of Washington. Section 4 of the charter as originally adopted by the Commission provided for a municipal board, consisting of three members appointed by the Civil Governor, by and with the consent of the Commission. This charter was amended June 18, 1908, after the organization of the Philippine Assembly. Under the amended charter the municipal board consists of six members, three to be appointed by the Governor-General, by and with the consent of the Commission, an ex-officio member, the engineer, and two elective members from the city of Manila, who shall hold office for two years or until their successors are elected (or appointed) and qualified.

One member of the board is designated in the appointment by the Governor-General as president. The president shall preside at meetings of the board, shall sign all ordinances, resolutions, bonds, contracts, and obligations made or authorized by the board, and shall issue orders necessary to enforce the ordinances of the city. Elections for elective members of the municipal board are held on the first Tuesday after the first Monday in November of each odd-numbered year, and the persons elected are required to take office on the first day of January next after their election.

There is also a secretary of the municipal board who is appointed by the municipal board, subject to the provisions of the Civil Service Act. There is also a disbursing officer of the board, who is "charged with the duty of dis-

bursing all moneys drawn from the insular treasury pursuant to appropriations made by the Commission."

The municipal board of the city of Manila exercises both legislative and executive authority. Its executive power is exercised "through the following departments, and by general supervisory control over the same: (1) Department of Engineering and Public Works; (2) Police Department; (3) Law Department; (4) Department of Fires and Public Inspection; (5) Department of Assessments and Collections." The heads of these departments, assistant heads, and all superintendents therein are appointed by the civil governor by and with the consent of the Commission.

The insular auditor audits the city accounts; the insular treasurer keeps the money of the city; the insular purchasing agent makes purchases for the city; the insular board of health makes provision for the health of the city; the insular prison, Bilibid, receives the city prisoners; and the general superintendent of public instruction exercises the same jurisdiction and powers in the city of Manila as elsewhere in the archipelago.

Topics.—Model for government of Manila.—The officers and their duties.—Powers of the municipal board.—Departments under it.—Connection with the Insular Government.

References.—*Public Laws of the United States Philippine Commission*, No. 183: *An Act to Incorporate the City of Manila.*

153. The Provincial Government.—The Insular, or central, Government exercises authority over the whole archipelago. The authority of the Municipal Government is confined in each case to the territory of the township or municipality. Between these two lies the government of the province. The governments of this class were organized under the Provincial Government Act, enacted in Manila in February, 1901. In accordance with this act the Provincial Government consists of five officers. These are a governor,

a supervisor, a treasurer, an attorney, and a secretary. The governor, the supervisor, and the treasurer of the province constitute the provincial board. The governor is elected by a provincial assembly, or electoral college, composed of the members of the town councils of the organized municipalities of the province. The supervisor is required to be a civil engineer, since upon him falls the business of building roads and bridges and the other public works of the province. The supervisor and the treasurer are in the classified civil service, and are appointed by the civil governor of the archipelago.

In the government of the Philippine Islands there are two groups of elected officers. The first group consists of the municipal officers, who are chosen at large by the qualified electors of the municipalities. The second group of elected officers consists of the governors of the several provinces, who in each case are elected by the provincial assembly. The provincial assembly is composed of the members of the town councils of the various towns in the province. The second election thus depends on the first, and the first is made by the restricted list of voters who participate in the municipal elections.

Topics.—The Provincial Government Act.—Officers of the Provincial Government.—Elections in the Philippines.

References.—*Public Laws of the United States Philippine Commission*, No. 83: *The Provincial Government Act.*

FOR ADVANCED STUDY

The Government of Dependencies.—Lewis, *The Government of Dependencies;* Reinsch, *Colonial Government;* Harvard *Law Review*, xii, 365–416.

The Government of Porto Rico.—*Reports* of the Governor of Porto Rico; Rowe, *The United States and Porto Rico; Forum*, 28: 257–267, 403–411; 30: 717–721; *North American Review*, 172: 1–22.

Civil Government in the Philippines.—*Reports* of Philippine Commission, 1900, 1901, 1902; *Outlook*, 71 (1902): 305–321; *North American Review*, 175 (1902): 299–308.

Decisions in the "Insular Cases."—*Outlook*, 68 (1901): 337–339, 175 (1901): 962–965; *North American Review*, 173 (1901): 145–153, 577–593; Rowe, *The United States and Porto Rico*, 39–82.

Educational Policy of Philippine Government.—*First Annual Report* of Secretary of Public Instruction, in *Report* of Philippine Commission, 1902, ii, 867–902; *International Quarterly*, 9: 1–15.

Land Policy of the United States.—McMaster, *History of the United States*, ii, 476–478; iii, 89–121; Schouler, *History of the United States*, i, 97–101, 198, 199; ii, 84, 85; iii, 191, 192; iv, 66–68, 152–156; Donaldson, *The Public Domain.*

CHAPTER XI

THE GOVERNMENT OF THE STATES

154. Federal and State Governments.—The Federal Government represents the nation in foreign affairs. The Federal Government speaks to the governments of other nations and receives from them whatever communication they may wish to make to it. Both the Federal and the State governments exercise legislative, executive, and judicial powers; both enact laws which affect the individual citizens directly; both enforce these laws without the intervention of any officers except those who belong to their several administrative systems; and both hear and decide cases in courts. But the Federal Government alone represents the nation in international affairs. Every sovereign nation has a central national government, and every sovereign nation has a certain form of local government which performs some of the functions of the State governments; but few nations possess district governments that have attained the same degree of individuality and importance as the State governments of the United States. The cantons of Switzerland and the subordinate states in the German Empire present the closest parallel.

In the early history of the United States it was thought that greater honor and dignity attached to offices in the State than to offices in the Federal Government. Certain conditions, such as the separate origin and strong individuality of the colonies, indicated the probability of a con-

tinued growth of this sentiment. The relative importance and the individuality of the State were strengthened by the difficulty of communication between the States; but the events of the later history of the country, which have confirmed and exalted the national Government, have changed the popular estimation of the two governments. Persons seeking important places in the public service are not disposed now, as they were formerly, to resign a position under the Federal Government to take a State office. At present the highest office of the State is often considered a stepping-stone to a desired Federal office. A growing national sentiment has magnified the public estimate of the Federal Government. Professor Bryce says, "The State set out as an isolated and self-sufficing commonwealth. It is now merely a part of a far grander whole, which seems to be slowly absorbing its functions and stunting its growth, as the great tree stunts the shrubs over which its spreading boughs have begun to cast their shade."

Topics.—The Federal Government and foreign affairs.—Central and local government.—Relative importance of State and Federal offices.

References.—Bryce, *American Commonwealth*, i, 537; in general, Chaps. XXXVI–XLVI; Hart, *Actual Government*, see Index under State Government; Cooley, *Constitutional Law*, 32.

155. The State in the American Union and Its Functions.—The State in the American Union is a subordinate political body. It possesses all the essential forms of the national Government except those designed for maintaining relations with foreign powers. Its organization embraces a constitution adopted by the direct vote of the people, a governor and other executive officers, a legislature of two houses, a system of local governments in counties, cities, townships, and school districts. It may establish a system of taxation; it may contract debts; it may form a system of laws cover-

ing the law of real and personal property, of contracts, of torts,[1] and of family relations. It may adopt a code of judicial procedure; it may establish a system of courts for the trial of cases arising under State law as distinctive from the Federal Constitution and the laws enacted by Congress. It may prescribe the conditions under which a person may be admitted to active citizenship or to the enjoyment of political rights in the nation. The Federal Government does not fix the conditions which must be fulfilled by those persons who would vote for members of Congress or other elective officers. It accepts the conditions fixed by each State. Any person who is by law permitted to vote in State elections may vote in congressional or presidential elections. The only restrictions on the power of the State in this matter are those contained in the fourteenth and fifteenth amendments to the Federal Constitution. The principal purpose of these limitations was to enable the Government to carry out its determination to give the negroes, recently in slavery, the same political rights that were enjoyed by the other citizens of the several States. The extent of the State's authority over its subordinate communities is complete. This is indicated by the fact that a municipality is an organized body, and that the charter of a municipality is an act passed by a State legislature and may be repealed or modified at the will of the legislature.

The functions of a State government and of all subordinate institutions of a State are limited by the rights of the Federal Government. Thus a State cannot declare war or make peace, or form a treaty, or make an alliance, with a foreign power; or regulate interstate commerce. Cities, counties, and towns organized as corporations in a State "are never intrusted and can never be intrusted with any

[1] Wrongful acts on account of which civil action may be brought.

legislative power inconsistent or conflicting with the general laws of the land, or derogatory to those rights either of persons or of property which the Constitution and the general laws guarantee. They are strictly subordinate to the general laws, and are created merely to carry out the purposes of those laws with more certainty and efficiency." Recent State constitutions have, moreover, laid somewhat narrow restrictions on the actual governments, particularly on the legislatures, of the States. While it is possible for the Federal Government to deal directly with the persons and the affairs of the individual citizens, it is nevertheless the State government that concerns itself more immediately with the individual citizen's interests. It is the State, in the exercise of its police powers, that citizens rely upon for the protection of their lives, health, comfort and property.

The State creates the corporations through which the bulk of modern industrial affairs are carried on, as well as the corporations instituted for the purposes of local government. By this activity it calls into being the two most powerful influences that affect the life of modern society. But the function of the State is not limited to the creation of corporations; it may also control them. In this there are presented opportunities for wise and beneficent action on the part of the officers of the State, as well as opportunities for corruption and the display of baneful folly. The State may not only create a corporation, but it may even prescribe the manner in which the corporation shall perform its work. "In the case of railroads, they are usually constructed and maintained by private capital, but they possess public functions which render them subject to State regulation, apart from such regulations as the public safety requires. To secure safety the State may regulate the grade of the road and the manner of crossing other roads; it may prescribe the signals

to be given at dangerous places; it may compel the road to fence in its tracks, and it may regulate the speed of trains."

But it may happen that a corporation created by a State will in the course of time extend its interests and its operations over two or more States. In this case it is evident that the regulating power of the State that created the corporation is confined within the State's limits. This has happened in the case of railroad corporations; and the inability of any State to render the control demanded by the circumstances led to the creation of the Interstate Commerce Commission as an arm of the Federal Government.

It is, moreover, to the State that the bulk of the inhabitants look for the means of education. The State maintains the public schools. The State establishes and supports institutions for the care of the feeble-minded and the insane. The national Government, wishing trained officers for the army and the navy, makes provision for their education at West Point and Annapolis. But generally the assistance of the Federal Government in the work of education has been rendered in the form of land grants to States. The State touches the individual at more points than does the Federal Government.

The administration of the affairs of the common schools, in the majority of the States, engages the services of a State executive officer—namely, the superintendent of public instruction—and subordinate superintendents of counties and cities, together with State, county, and city boards of education. These officers are put in the positions they hold by various methods of election and appointment. The system of public instruction as carried out in many of the States embraces primary, intermediate, and high schools; a State university; and State, county, and city normal schools.

Topics.—Main features of a State government. Limitation of State action: by Federal authority; by the State constitution.—The extent of State power.—Interstate Commerce Commission.—The State and education.

References.—Bryce, *American Commonwealth*, i, 310, 320, 400–505; Hart, *Actual Government*, 114–126; Lalor, *Cyclopædia*, iii, 800–812; Ford, *American Citizen's Manual*, Part II, 76.

156. Antecedents of State Constitutions.—Each State in the Union has an organization similar in many respects to that of an independent nation. Like Switzerland, France, the German Empire, or the United States, it has a constitution or fundamental law which prescribes the organization of the several departments of government and conveys to each department the power to be exercised by it. The State constitution holds essentially the same relation to the State legislature that the Federal Constitution holds to Congress. It is above the legislature and cannot be amended or modified by that body. It is adopted by the direct vote of the electors of the State, and they alone can amend or repeal it. All State statutes which are found to be in opposition to its provisions are invalid. It is the direct successor of the colonial charter; and the colonial charters in force at the beginning of the War of Independence had their legitimate ancestors in the charters granted to the merchant guilds and trading companies of early Europe. The trading company's charter grew into a constitution under the necessity of making more extensive provisions for political control. When the bond was severed which bound the English colonies in America to the Crown, the power to modify the charter of any one of these colonies fell, in accordance with the theory of popular government announced in the Declaration of Independence, into the hands of the people of the colony. The trading company grew into circumstances where it was obliged to

exercise political power; and the charter, modified from time to time, conferred this power. The company grew into the colony and the colony into the State.

Topics.—Position of State constitution.—Its line of descent.

References.—Bryce, *American Commonwealth*, i, 27, 413, 458; Hart, *Actual Government*, 46–48; Fiske, *Civil Government*, 167–172.

157. The Formation of a State Constitution.—A State constitution is a law adopted by the voters of the State. In case the State is already organized, the voters decide whether the constitution shall be revised as a whole or only amended in certain parts. The initiative in presenting this question to the voters is taken by the legislature. The reformed constitution is usually framed by a convention. A convention elected by popular vote for this purpose has no power to establish the constitution as an authoritative law. When the draft of the proposed constitution has been completed by the convention, it is submitted by that body to the voters. The convention is then dissolved. It is not convenient to bring all the voters of the State together in one place to vote, as is done in a number of the Swiss cantons or as was formerly done in the ancient Teutonic tribes. The question of adopting or rejecting the proposed constitution is therefore submitted to the voters at their ordinary places of voting. They usually vote to adopt or reject the draft as a whole, but sometimes provision is made to enable them to accept some parts and to reject other parts. The constitution of a State is thus a fundamental law adopted directly by the voters of the State; and, following the same course of procedure, it may be amended by them at any time.[1]

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[1] See §§ 146, 160.

Topics.—The initiative in making or revising a State constitution.—The convention.—Method of procedure.—Character of State constitution.

References.—Bryce, *American Commonwealth*, i, 418, 419, 662–664, 456; Hart, *Actual Government*, 59–63.

158. Growth of State Constitutions.—We may note three periods in the growth of State constitutions. The first period embraces the early history of those constitutions that were inherited from the colonies and were modified to suit the new conditions, and those that were framed under influences proceeding from the struggle for independence. The colonies had revolted against the arbitrary power of the king; and in modifying their charters or in forming new constitutions they sought to avoid placing much power in the hands of one man, whether as a civil executive or as a military officer. The people of the original States favored the legislature and feared the executive. In most of the States the governors were elected by the legislatures. They were checked in their authority by a council, but they had no part in creating this council. They had no power to veto the acts of the legislature, and the right enjoyed by the royal governors during the colonial period to adjourn or dissolve the legislature disappeared with England's authority. The voters had not asserted their claim to direct interference in the affairs of government, and at that time government by the people seemed to mean government by the legislature. This first phase in the history of State constitutions belongs to the period ending with the first decade of the nineteenth century.

The second phase in the growth of State constitutions appears in the period of fifty years immediately preceding the Civil War. This was the period when the people were becoming more and more democratic. The social traditions and practices derived from England were modified by

the spirit of equality; and this spirit was fostered by the equality of material conditions that prevailed among the people of the early States, who were devoted almost exclusively to agriculture. The most striking changes in this period were: (1) That the relics of the connection between the Church and the State were swept away; (2) that the practice of adopting State constitutions by direct popular vote was established; (3) that it became customary to have the governor elected by the people instead of by the legislature; (4) that the suffrage was greatly extended, and property qualifications were abolished; (5) that many judges heretofore appointed became elected.

The third phase of this growth belongs to the period since the Civil War. The changes observed in this period tend to strengthen the position of the executive and judiciary departments of the State government. The governor is given a limited veto on acts passed by the legislature; his term of office is somewhat lengthened; and restrictions on reëligibility are removed. The salaries of the judges have been increased; their terms of office lengthened; and a strong opinion has appeared in favor of their appointment by the executive and in opposition to their election by the people. At the same time important restrictions have been placed on the legislature, while the people have legislated directly on many subjects through provisions introduced into the State constitutions.

Topics.—First period in growth of State constitutions.—Constitutional provisions of first period.—Second period.—Characteristics of second period.—Third period.—Changes effected in third period.

References.—Bryce, *American Commonwealth*, i, 434–440; Fiske, *Civil Government*, 195–208; Hitchcock, *American State Constitutions*, 1–60.

159. State Constitutions Restrictive.—Any provision of a State constitution, as well as a law passed by Congress, is

invalid if found to be in conflict with the Federal Constitution. Moreover, the constitution of a State limits the power of the State legislature so that a law passed by that body is invalid if found to be in conflict with the State constitution. The question as to whether there is or is not conflict is determined by the courts in adjudicating causes actually brought for trial. In considering the constitutionality of a Federal law, it is important to inquire whether necessarily the Federal Constitution conveys to the Congress authority for making the law in question. In considering the constitutionality of a State law, it is important to inquire whether the State constitution has prohibited the legislature from enacting the law in question. The Federal Constitution is a grant of powers. The State constitution is a limitation of powers which, without the limitation, are presumed to exist. This principle is clearly set forth in the decisions of the courts:

"It has never been questioned that the American legislatures have the same unlimited power in regard to legislation which resides in the British Parliament, except where they are restrained by written constitutions. That must be conceded to be a fundamental principle in the political organization of the American States. We could not well comprehend how, upon principle, it could be otherwise. The people must, of course, possess all legislative power originally. They have committed this in the most general and unlimited manner to the several State legislatures, save only such restrictions as are imposed by the Constitution of the United States or of the particular State in question." "The people, in framing the constitution [of the State], committed to the legislature the whole law-making power of the State which they did not expressly or impliedly withhold. Plenary power in the legislature for all purposes of civil government is the rule. Prohibition to exercise a particular power is an exception."

Topics.—Restrictions on State constitutions and State laws.—Restrictions on State legislatures.

References.—Cooley, *Constitutional Limitations*, 108; Hart, *Actual Government*, 315–319; Hitchcock, *American State Constitutions*, 35; Miller, *Lectures*, 577.

160. Direct Legislation Through State Constitutions.—In the canton of Appenzell in Switzerland, the people assemble in a common place of meeting to elect officers and adopt laws for the canton by direct vote. Under certain conditions the direct vote of the people of Switzerland is applied also to the passage of federal laws. The federal legislature formulates, approves and proposes laws; and, if it is demanded by a sufficient number of voters, they are then submitted to the people, who vote on them in the several cantons. This practice of referring laws to the people, to be finally adopted by direct popular vote, is called *referendum*, a term which may be defined as the right of the people, by direct vote, to accept or reject certain acts that have been passed by the regular legislative body. In the formation of a State constitution the practice is similar to that of the referendum. The draft of the constitution is formulated by a representative body called a convention and is then submitted to the voters for adoption.[1] By introducing into the draft or by inserting into amendments matters that properly belong to statutes, there is carried out a system of direct legislation by the people. Therefore, in amending the constitution the practice is essentially that of the referendum, since the amendment is formulated, discussed, and approved by the legislature before it is submitted to the people. The State constitution sometimes provides that certain questions shall be submitted to the voters of the State for final decision. In Minnesota a

[1] See §157.

certain class of railway laws might not take effect until they had been approved directly by the voters; and in the same State "moneys belonging to the internal improvement land fund shall never be appropriated for any purpose till the enactment for that purpose shall have been approved by a majority of the electors of the State, voting at the annual general election following the passage of the act." This system of direct legislation has certain merits. It interests the people in the questions presented to them and tends to give them information on important public matters. On the other hand, it may be said that it detracts from the authority of the legislature, weakens its sense of responsibility, and thus hinders improvement in the character of that body.

Topics.—The referendum in Switzerland.—Similarity of method in making a State constitution.—Direct legislation.—Merits of the system.—Objections.

References.—Bryce, *American Commonwealth,* i, Chap. XXXIX; ii, 316; Hart, *Actual Government,* 78–84.

161. The People and the Government.—In the growth of popular government there has hitherto been observed a tendency on the part of the people gradually to come nearer the actual control of public affairs. This is manifested in the extension of the suffrage, in the demand that laws before becoming valid shall be submitted to a popular vote, and in the increasing number of provisions that are introduced into the more recent State constitutions and voted on by the people. A comparison of a recent voluminous State constitution with the succinct Constitution of the United States will show to what extent the State constitution has been made to embrace topics properly belonging to administrative law. In this the voters manifest a wish to limit the authority of the legislature by introducing into

the constitution itself matters which, in any proper separation of functions, would be assigned to the legislature rather than to the direct vote of the people. The people appear to regard the government which they themselves have constituted with a suspicion somewhat like that with which the people of England once regarded the king; and through the modern State constitutions they have given a more or less distinct expression of this sentiment, and have attempted to guard themselves against the encroachments of the regularly constituted authorities.[1]

Subject to the limitations contained in the fourteenth and fifteenth amendments to the Federal Constitution, the State fixes the condition of voting in both national and State elections. The qualifications for voters in Federal elections are those fixed in each of the several States for voting for members of the lower house of the State legislature. Voters in Federal elections in different States have, therefore, not necessarily the same qualifications; but the variations are insignificant.[2] Everywhere the people have been endowed with a common democratic spirit which has found expression in State institutions that are essentially uniform. All the States have practically universal manhood suffrage. In eight States no pauper can vote; in Rhode Island there is still a property qualification; and four States—Delaware, Massachusetts, Pennsylvania, and Tennessee—require the payment of some State or county tax. Massachusetts, Connecticut, and California have a certain educational test—the ability to read the Constitution. With regard to suffrage, as with regard to legislation by popular vote, there are many persons in the nation who are disposed to go to the democratic extreme. In the one case it is the advocacy of the referendum; in the other, the advocacy of woman suffrage.

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[1] See §163.

[2] See §136.

Topics.—Popular desire for immediate control of the Government.—Extension of suffrage, referendum, legislation in State constitutions.—Suffrage in the States.

References.—Hart, *Actual Government,* 66–71, 125; Fiske, *Civil Government,* 173–183; Bryce, *American Commonwealth,* i, 427, 446, 451.

162. The State Legislature.—The main institutions of the State and of the Union are framed under the influence of a common ideal, and consequently have many similar features. Each has a chief executive, a body of executive officers, a legislature of two houses, a supreme court, and a system of inferior courts. Three States—Pennsylvania, Georgia, and Vermont—had, for a few years, legislatures of one house each. Georgia adopted the two-house system in 1789, Pennsylvania in 1790, and Vermont in 1836. The members of the two houses are chosen by popular vote, each in a senatorial or house district, as the case may be. A senatorial district is larger than a house district, and the senate is a correspondingly smaller body than the house. The senators generally hold for longer terms than the assemblymen or representatives. In half of the States they hold for four years, in about a quarter of the States they hold for two years, and in the rest for one or three years. The State senate, like the United States Senate, is only partially renewed at any one time; while the lower house, like the Federal House of Representatives, is wholly renewed at the end of each period for which the members are elected.

The most conspicuous restriction on the election of members to either the State or the national Legislature is that they shall reside in the districts for which they are severally elected. This restriction, whether by law or by custom, has been seriously criticised as making the area of choice smaller and consequently causing inferior men to be chosen.

What has been said about the method pursued in Congress in making laws indicates in a general way the process in the State legislatures. Writing the bill in the proper form is the first step. When written it must contain only one subject, and this subject must be indicated in the title. The bill is introduced by a member, and after it has been read either in full or by title it is referred to a committee. The committee considers the bill carefully, listens to arguments in favor of it as well as to arguments against it, and finally either reports it to the house to which the members of the committee belong, or allows it to remain with the committee. In the house to which it is reported it is discussed and voted on. If the required majority vote for it, the presiding officer signs it, and it is then sent to the other house. There it is treated in a similar manner; and, if passed, it is sent to the governor. The governor has a definite period, fixed by law, of ten days or more in which to decide whether he will sign it or not. There are several ways by which the bill may now become a law: (1) The governor may sign it; (2) he may veto it, and it may be passed over his veto by the required majority of each house; (3) he may neglect to sign it or veto it, during the period allowed him to consider it, when it becomes a law without further action.

Topics.—Similar features in State and national institutions.—Terms of State senators.—Residence in district represented.—Process of making laws in a State.

References.—Bryce, *American Commonwealth*, i, 95, 98, 222, 418, 420, 468–470; Hart, *Actual Government*, 128–139; Fiske, *Civil Government*, 170–188, 255–258.

163. Restrictions on State Legislation.—While the governor has no right to dissolve or adjourn the legislature, in all but four States he has the right to veto. This right, however, like that exercised by the President, is only the

right of a limited veto. In some States an act may be passed over the governor's veto by a majority of three-fifths of each house, and in other States by a majority of two-thirds of each house, and in still others by a simple majority of all the members elected. Against the possible unwisdom or misdirected self-interest of the many members of the legislature, there is a disposition on the part of the people to rely on the wisdom, impartiality, and comprehensive view of the governor. On occasions when the people find their well-being threatened, they often turn instinctively to some one person, hoping to find him willing and able to be their champion. Modern democracy has not entirely obliterated the disposition of the members of the tribe to look to the tribal chief for their protection.

A second form of restriction appears in the exclusion of certain specified subjects from legislative competence. The legislatures are prohibited by the State constitutions in their more recent forms from making laws of local or special application on a large and increasing number of subjects.

A third form of restriction relates to legislative procedure. This restriction makes provision concerning the majorities necessary to pass certain bills—whether the majority required in any given case shall be a majority of the members present, a majority of all elected, or a prescribed part of this number. It makes stipulations concerning the method of taking and recording votes. It specifies the intervals required to elapse after each reading of a bill before its last reading and a final vote on it. It prescribes that a bill shall include only one subject, and that this subject shall be expressed in the title.

A fourth form of restriction is found in the division of the legislature into two houses. If a bad law passes one house without becoming sufficiently well known to provoke popular opposition, it is expected that the delay necessary

before it is brought to vote in the other house will furnish an opportunity to rouse a sentiment against it, either by discussion among the people or by debate in the house itself.

Another and fifth restriction on legislation consists in limiting the number of days on which the legislature is authorized to sit or for which the members may receive pay. Making the sessions biennial instead of annual is a movement toward the same end. Only six States adhere to the earlier general practice of annual sessions.

Topics.—Restrictions of State legislation: 1. Governor's veto; 2. Constitutional exclusion of certain subjects from legislative power; 3. Required majorities in certain cases, specified intervals between readings of bills, limitation of a bill to one subject; 4. Existence of two houses; 5. Limitation of time of sessions.

Reference.—Bryce, *American Commonwealth*, i, 427, 470.

164. State Taxation.—Generally speaking, the Federal Government raises its revenues by indirect taxation, while the State relies almost entirely on direct taxation. The Federal Government derives the bulk of its funds from customs duties; while the State, forbidden to impose customs duties, derives the main part of its revenues from taxes levied on real and personal property. Local officials, called assessors or appraisers, acting under the direction of the State law, make lists of all taxable property within their several districts and fix a valuation for each piece of such property. If a high value is fixed, the people of the town or the county are obliged to pay a proportionately large part of the taxes. The assessor, who is a locally elected officer, is, therefore, moved by various considerations to make the valuation low; but in order that the valuation may be made sufficiently high and uniform throughout the State, a board of equalization is appointed with power to raise or lower the valuation fixed by the local assessors.

County boards of equalization also are created, whose duty it is to equalize the valuations made by the local assessors in the several towns of their respective counties; but the most efficient board of equalization does not prevent the existence of great inequalities in the burdens of taxation, owing to the ease of discovering certain kinds of property and the difficulty of discovering other kinds. It is easy to make a list of all the houses and lands in the town or the State, but it is very difficult to make a list of all the notes and bonds that are owned in the town or the State; and for this reason two persons owning equal amounts of property of different kinds may pay very unequal amounts of taxes. Taxes are paid on all property in lands and buildings because they can be easily found and assessed, but taxes are paid on only a part of personal property because it can be readily concealed. Besides the property that escapes taxation because of its fraudulent concealment by the owners, there is also a large amount on which no taxes are paid because it is by law exempted. This amount varies in accordance with the exemption laws of the several States. California exempts from taxation very little property except such as belongs to the Government, and at one time embraced in the list of taxable property even churches and other institutions not belonging to the State; while many other States have exempted educational, charitable, scientific, literary, and agricultural institutions, as well as churches and libraries not owned by the State.[1]

[1] The constitution of California, Article 13, Section 9, contains the foliowing statement concerning the boards of equalization: "A State board of equalization, consisting of one member from each congressional district in this State, as the same existed in eighteen hundred and seventy-nine, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and eighty-six, and at each gubernatorial election thereafter, whose term of office shall be for four years; whose duty it shall be to equalize the valuation of the taxable property in the several

Topics.—Source of State revenue.—Levying taxes.—The assessor.—Board of equalization.—Inequalities in the burdens of taxation.—Property escaping taxation.—Kinds of property exempt.

References.—Bryce, *American Commonwealth*, i, 490–504; ii, 393; Cooley, *Constitutional Law*, 60; Hart, *Actual Government*, 408, Chap. XXII.

165. The Governor.—The executive head of the State is called the governor. His office has been continued down to the present from the colonial period of our history, and it was the model on which the makers of the Federal Constitution formed the office of President. He is elected by the voters who elect the members of the State legislature, and the period for which he is elected varies in the different States from one to four years. This period is either two or four years in a large majority of the States.

While the President is surrounded by a body of advisers of his own appointment, the governor has no cabinet or

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counties of the State for the purposes of taxation. The controller of the State shall be *ex officio* a member of the board. The boards of supervisors of the several counties of the State shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; *provided*, such State and county boards of equalization are hereby authorized and empowered, under such rules of notice as the county boards may prescribe as to the action of the State board, to increase or lower the entire assessment roll, or any assessment contained therein so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll; *provided*, that no board of equalization shall raise any mortgage, deed of trust, contract, or other obligation by which a debt is secured, money, or solvent credits, above its face value. The present State board of equalization shall continue in office until their successors, as herein provided for, shall be elected and shall qualify. The legislature shall have power to redistrict the State into four districts, as nearly equal in population as practicable, and to provide for the election of members of said board of equalization."

advisory council. The executive council which existed in each of the original States except South Carolina has disappeared in all cases except Massachusetts, Maine, and North Carolina. Although the governor has no council or cabinet like that of the President, there are usually several minor officers who have part in the general administration of the State. They are generally elected, and they are not responsible to the governor. These officers are not the same in all of the States. Some of the most prominent are a lieutenant governor, a secretary of State, a State auditor, a State treasurer, an attorney-general, a State superintendent of public instruction, and an officer or board of officers in charge of public works. The office of lieutenant governor, with its limited functions, suggests the office of the national Vice-President. In most of the States, he is *ex officio* the presiding officer of the senate. He succeeds to the governorship in case of the death or disability of the governor.

The governor's activity falls within the limited sphere of a subordinate political organization, and is, therefore, necessarily limited. His main function is to provide for the faithful administration of the law. He may pardon convicted criminals, except such as have been convicted on impeachment or for treason. He commands the State militia and has authority to appoint a limited number of State officials. He exercises in legislation a limited veto, which in certain cases may be overridden by the legislature.

Topics.—The office of governor.—Term of office.—Minor officers; lieutenant governor.—Duties of governor.

References.—Bryce, *American Commonwealth*, i, 222, 460–479, 508, 527, 720; ii, 112; Hart, *Actual Government*, 136–146; Fiske, *Civil Government*, 170–179.

166. The State Judiciary.—The principal State courts may be grouped in three classes: In the first class are the

supreme courts or courts of appeal in the States; in the second class, the superior courts of record; in the third class, the various local courts. Most of the original States had superior chancery courts. These were later abolished in many States, and cases in equity were referred to the ordinary law courts.[1] The State courts exercise final jurisdiction except in cases for which legal provision has been made for appeal to the Supreme Court of the United States. The reported decisions of a court of record in any State are received in the other States and considered, like the reports of the English courts, as indicating what the law is on the subject treated; but the State law reports are not all regarded as equally authoritative. The decisions of a weak court offer only imperfect evidence of the law. This constant reference in one State to the decisions rendered in other States tends to preserve the harmony and uniformity of the laws enforced throughout the Union.

A conspicuous sign of the growth of democracy in the United States before the Civil War was the change made in the method of appointing State judges. In eleven of the thirteen colonies they were appointed by the governor, but in Connecticut and Rhode Island they were elected by the legislature. Under the first State constitutions the judges of four States, in addition to Connecticut and Rhode Island, were elected by the legislature. In one State, Georgia, they were elected by the people. During the fifty years prior to 1860, American society became more democratic. Several States took the appointment of the judges from the governors or the legislatures and caused them to be elected. The new States organized in the West adopted the more democratic method of selecting judges. At present, in five States they are elected by the legislature; in eight appointed by the governor; and in the other States elected by the people.

[1] See *Equity*, § 134.

The original States have generally been conservative in this matter, holding to the method of appointment by the governor; but the new States have caused their judges to be elected by popular vote. Under the influences that have produced these results, a change in the judges' tenure of office has been effected. In the early history of most of the States, the judges were appointed for life; but the life tenure is retained in only four States. In all the other States the judges are elected or appointed for a definite term of years. The average term is not more than eight or ten years. The two conspicuous results of the growth of the democratic spirit with respect to the State judiciary are the selection of the judges by popular vote and the establishment of short terms of service.

It is affirmed that the direct dependence of the judges on the favor of the voters influences their judgments and tends to defeat the ends of justice. The full mischievous effect of this dependence is prevented: (1) By the presence of the Federal courts in each State, whose judges, appointed for life, are usually independent and incorruptible officials; (2) by a strong public opinion which demands that honesty and impartiality shall be maintained in the courts even though other branches of the Government should fall below the proper standard; (3) by the influence of the bar, which often protests against bad nominees and in general exercises a conservative and sobering influence on the radicalism of the community. In spite of these restraining influences, the elective system does not, speaking generally, secure for the State courts such judges as an enlightened commonwealth ought to have. They are, taken as a body, inferior both in learning and character to the appointed Federal judges. Because we approve of the republican form of government, it does not follow that we are obliged to apply the principle of election without regard to results. The makers of the Federal Constitution were believers in re-

publican government; but they carefully provided that in the system they created the judges should be appointed and not elected.

Topics.—Three classes of State courts.—Final jurisdiction of State courts.—Appointment of State judges.—Term of office.—Forces tending to sustain the high character of the courts.

References.—Bryce, *American Commonwealth*, i, 32, 430, 480–485; ii, 495–505; Hart, *Actual Government*, 152–165; Fiske, *Civil Government*, 185–188.

167. The Grand Jury.—The satisfactory working of the judiciary is dependent not alone on wise and upright judges. The other institutions of the court must be maintained free from corruption and be moved to effective coöperation. The most important of these institutions are the grand jury and the petit jury. These, the English colonists carried to America, for they regarded them as essential in making permanent the liberty they sought to establish.

The grand jury consists of not less than twelve nor more than twenty-three persons. The members are taken, as prescribed by law, from the citizens of the community in which the body is organized. They are sworn and directed by the judges to inquire into and make presentment of all offenses committed within their district. The presentment is made only when at least twelve members of the grand jury are in favor of it, and this presentment may be made the basis of an indictment on which the person accused may be brought to trial. The fact that the members of the grand jury, who examine the grounds of the accusation, belong to the same community as the accused person, is regarded as security against unjust prosecutions. When the grand jury has examined the formal accusation or indictment against a person, it determines whether the charges are of such a nature as to warrant the State in proceeding with the trial. In case the indictment is found to be "a true

bill," the prisoner is brought to trial; otherwise he is released.

Topics.—Coöperative institutions of the court.—Description of grand jury.—Functions.—Procedure.—A true bill.

References.—Miller, *Lectures*, 490, 506, 517; Cooley, *Constitutional Law*, 290.

168. Trial by Jury.—Trial by jury "in criminal cases has been looked upon as a necessary part of the liberties of the people, and a sentiment attaches to it which will scarcely suffer its value to be questioned. Every State constitution preserves it for suits in the State courts, and every new or revised constitution repeats a guaranty of it. Even the common-law requirement of unanimity in the verdict, which is of more than doubtful value, is retained without inquiry or question, because it has existed from time immemorial."[1] In the fifth and seventh amendments to the Constitution, adopted in 1791, it was provided that "no persons shall be held for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger"; and that "in suit at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reëxamined in any court of the United States, than according to the rules of the common law."

A person brought to trial is entitled under the law to certain privileges. When the jury has rendered a verdict concerning him, he is entitled to have it treated as final; whether he has been acquitted or condemned, he may not be tried again for the same offense. The jury may fail to come to an agreement either to convict or to acquit, or it

[1] Cooley, *Constitutional Law*, 238.

may be discharged before the completion of its work, or the judgment of the court may be withheld even after a verdict by the jury has been rendered—in any one of these cases a new trial may be had. In any trial, moreover, the accused may not be compelled to testify against himself; and without due process of law he may not be deprived of life, liberty, or property.

As maintained in the United States, the jury system is generally conformed to the following conditions: (1) The jury must be composed of twelve persons; (2) the jury must be drawn from the district or county in which the trial is held, and from the whole number of qualified citizens not expressly exempted by statute; (3) the verdict of the jury must be unanimous; (4) the jury must be impartial.

While these are the normal conditions under which the jury exists, some of them are modified under certain circumstances. In certain cases in some of the States a jury may be composed of less than twelve persons. The requirement of unanimity is strictly adhered to in criminal cases, and generally also in civil cases; but in civil cases in California and Louisiana a verdict by two-thirds of the jury may be recorded.

Topics.—American opinion of trial by jury.—Constitutional statement.—Verdict.—Description of jury system.—Unanimity.

References.—Fiske, *Civil Government*, 186; Hart, *Actual Government*, 22–32, 156–160; Willoughby, *Rights and Duties*, 95–108; Miller, *Lectures*, 319, 361, 490, 499.

169. The Judgment of One's Peers.—The statement that one must be subject to the "legal judgment of his peers" has no important significance in the United States, since the law here recognizes no distinct social classes. In England, where strongly marked classes existed, if one were tried by a jury composed of members of the class to which he belonged, it was supposed that he would receive an im-

partial verdict; if his jury was composed of members of other classes, he might expect to receive a verdict more or less modified by class prejudice or class antagonism. Therefore, in order to secure for the accused as just or as favorable a judgment as possible, English law provided for trial by a jury of one's peers, or members of the class to which one belonged. It was supposed that the most important influence that might interfere with the impartiality of a jury was such as might arise from the differences of social classes. The absence of legally recognized classes in the United States has taken away all importance from this special provision. The purpose of the law is the same in the United States as in England,—namely, to secure an impartial verdict,—but there is here no recognized single cause specially interfering with the impartiality of a jury.

Topics.—Phrase of little significance in the United States.—Original purpose.

FOR ADVANCED STUDY

The State Government.—Goodnow, *Comparative Administrative Law*, i, Books II, III; Johns Hopkins University, *Studies*, iii, Nos. 9, 10; iv, No. 5; Cooley, *Constitutional Law*, Chaps. X, XI; Cooley, *Constitutional Limitations;* Bryce, *American Commonwealth*, i, Chaps. XL–XLVI; Baldwin, *Modern Political Institutions*, Chaps. III, IV, XI; Evans, *Handbook of American Government;* H. von Holst, *Constitutional Law*, §§ 79–90.

State Legislatures.—American Academy of Political Science, *Annals*, i, 26–42; vi, 254–267; *Political Science Quarterly*, v, 224–258; Bryce, *American Commonwealth*, i, Chaps. XL, XLIV, XLV; Roosevelt, *American Ideals*, No. 5; Schouler, *Constitutional Studies.*

State Legislation.—Eaton, *Government of Municipalities*, Chap. X; American Bar Association, *Reports*, 1884: 275–301, 1892: 245–311; American Academy of Political Science, *Annals*, vii, 411–425; ix, 231–245; xi, 174–190; xiii, 212–229; xv, 160–170; xvii, 244–259.

The State Executive Department.—Cooley, *Constitutional Limitations*, 218–222; Goodnow, *Comparative Administrative Law*, i, 74–82, 102–106, 134–137, 146–161; ii, 1–100; Evans, *Handbooks of American Government;* Bryce, *American Commonwealth*, i, Chap. XLI; Columbia University, *Studies*, ix, No. 3; *Political Science Quarterly*, 15: 50–74; American Academy of Political Science, *Annals*, iv, 883–903; xvii, 74–91; xviii, 434–445; Roosevelt, *American Ideals*, No. 8.

The State Courts.—Cooley *et al.*; *Constitutional History*, Chap. V; A. L. Lowell, *Essays*, No. 3; Bryce, *American Commonwealth* (revised edition, 1895), i, Chap. XLII; ii, Chaps. CI, CII; Baldwin, *Modern Political Institutions* (1898), Chap. VII; Dillon, *Municipal Corporations* (fourth edition, 1890), ii, Chaps. XX–XXIII; De Tocqueville, *Democracy in America*, i, Chaps. VI, VII.

The Referendum.—Bryce, *American Commonwealth*, i, Chap. XXXIX; Deploige, *Referendum in Switzerland;* Oberholzer, *Referendum in America*, Chaps. VII–XVI.

The Amendment of Constitutions.—Borgeaud, *Adoption and Amendment of Constitutions*, Parts I, III; Bryce, *American Commonwealth*, i, Chaps. XXXII, XXXVII, XXXVIII; Ames, *Amendments to the Constitution* (American Historical Association, *Papers*, v, 253–263); Burgess, *Political Science*, i, 137–154; Oberholzer, *Referendum in America*, Chaps. III–VI.

The Sins and Shortcomings of State Legislatures.—*Atlantic Monthly*, 79: 366–377, 80: 42–53; *North American Review*, 165: 240–246, 168: 84–91.

Road-Making in States.—*Forum*, 26: 668–672; *Popular Science Monthly*, 51: 73–82; Smith, *Training for Citizenship*, §§ 92, 94; *Encyclopædia Americana*, xiii, under *Roads and Highways.*

State Railway Commissions.—Dixon, *State Railroad Control*, 201–211; Hendrick, *Railway Control by Commissioners*, 92–119; Hadley, *Railroad Transportation*, 134–145.

CHAPTER XII

LOCAL GOVERNMENT IN THE UNITED STATES

170. The Government of New England Towns.—The local governments of the United States comprehend the town, the city, and the county governments. The most noteworthy of these is the town government of New England, which has come down to us from colonial times. Its most distinctive characteristic is its democracy. It is a government by the people. The territory of the town is a few square miles in extent, with clearly determined but irregular boundaries. The inhabitants live in part on the farms into which the territory is divided and in part in the village or villages that have grown up around the church or some place favorable for manufacturing. The voters come together at least once a year to make laws for the town, to elect the officers, to vote the necessary taxation, and to make the appropriations needed for schools, roads, and other local purposes. The meeting is presided over by the chairman or moderator, and each voter enjoys the same right as every other voter to introduce measures and to take part in the debate. The town meeting is held in the church, or in the townhall, if there is one, or in a schoolhouse. The principal executive officers elected at the town meeting are called the selectmen. There are usually three, five, or seven in a town; and there may be even a larger number. The number in any given case depends on the population and the

importance of the town. They manage the public business under directions contained in the laws or resolutions of the town meeting. There is also a town clerk. He acts as secretary of the town meeting and keeps the town records. Other officers are a treasurer, assessors who make a valuation of the property for the purpose of taxation, a collector, who collects taxes, and several minor officers such as cemetery trustees, library trustees, and members of school committees.

The appointment of minor officers and employees, and the details of administration must be left to a single person or to a small body of persons. Thus the selectmen, in the intervals between the town meetings, are required to perform nearly all of the functions of the town meeting itself. The most important limitations on their activity are that they may not appoint the higher officers, nor make laws except under special authorization of the body that elected them. They summon the town meeting; they manage the financial affairs of the town; they establish rules relating to the admission to the town of new inhabitants; they have charge of the common lands; they control the laying out and improvement of the roads; they fix boundaries and settle controversies relating to them; they have general control over public institutions and public means of communication; and in some instances they exercise a censorship over morals.

The town was formerly the fundamental political organization, and had a large part in the State government; and in some States at present each town, however small, sends at least one representative to the State legislature. Where every town selects one or two representatives from its inhabitants, we have an extreme case of small district representation, with the inevitable result of a numerous legislature composed principally of ordinary men from the small towns. As long as New England continued to be occupied almost exclusively by the descendants of the origi-

nal inhabitants, it was able to maintain the reputation of its ancient democracy. But the decay of many of the towns and the coming of immigrants without political experience or knowledge of New England traditions has brought into influence a population not fitted to the institutions.

Topics.—The New England town.—The town meeting.—Officers of the town.—Reason for appointing selectmen in a democratic town.—Restrictions on their power.—Their functions.—Representation of towns in the State legislatures.—Disadvantages of the old system.

References.—Bryce, *American Commonwealth*, i, 561, 565, 567, 572, 576, 580, 583, 592, 631; ii, 246; Hart, *Actual Government*, 170–178; Fiske, *Civil Government*, Chap. II; Ford, *American Citizen's Manual*, Part I, 53–61; Bryce, *American Commonwealth*, i, 567; Fiske, *Civil Government*, 20–38, 79; Hart, *Actual Government*, 171, 172.

171. Phases of the History of the Town.—The town as it appears in the United States has as its historical antecedent the clan, the mark, or the old English town organization. In the old English town there was a *tungemot*, or town meeting, which exercised in the management of local affairs essentially the same powers as the later town meeting of New England. The town had also in England, through representatives in the assemblies of the hundreds and the shires, part in the transaction of business in which several towns were interested. This practice furnished an early instance of political representation, which has become the most vital principle in the Government of the United States. The town was a political unit, and the purposes of its organization were the common interests of the members of the community. The coöperation of the inhabitants in the transaction of secular business created a bond of community feeling which tended to hold them together in managing

their religious affairs. Thus, in the course of time, as these affairs became organized, the parish became coextensive with the town; and in certain instances the designations of town and parish were applied indifferently, each covering both the secular and the ecclesiastical organizations and interests. In these instances the vestry was only another form of town meeting. A later step in the history of the town was a more or less complete separation of the ecclesiastical from the civil affairs, and the application of the term parish to the community as a religious body.

The towns in New England held a position of greater political importance than did those in England. Because the hundred did not appear in New England, and because of the imperfect development of the county, the towns became the basis of the constitutional structure that was erected in the States. In the first place, they constituted the fundamental districts for the assessment and collection of taxes. In the second place, each was required to maintain a body of men with military training; and thus the towns were the units of the militia organization. In the third place, the towns were the districts recognized in the representative system of the colonies and the States.

Topics.—Antecedents of the town.—Its relation to the parish.—Reason of the town's prominence in New England.

References.—Bryce, *American Commonwealth*, i, 562; Hart, *Actual Government*, 170; Fiske, *Civil Government*, 34–47.

172. Transitory Local Institutions of the Dutch in New York.—The feudal organization transplanted by the Dutch to New York and established on the banks of the Hudson River was necessarily transitory. Under the authority of the Dutch, exercised through the Dutch West India Company, it was provided that any person who should plant a colony of fifty persons over fifteen years of age would be permitted to hold a tract of land extending four miles along

one side of a navigable river, or two miles on each side, "and so far into the country as the situation of the occupiers will permit." The holder of such a tract was called the "Patroon," and the persons who settled on his lands occupied the position of feudal dependents. They had no rights of self-government, but were required to serve the patroon for the period specified in their agreement with him. The grant by which the land was conveyed to the patroon made it his peculiar property subject to perpetual inheritance by his heirs.[1]

When it became manifest that feudalism of the European type would not flourish in the New World, a new charter was granted to the company, and by this charter a class of small proprietors was created. It provided that anyone who should take with him five persons over fifteen years of age, and settle on territory under the jurisdiction of the Dutch, might receive two hundred acres of land as his private property and certain privileges with respect to the public lands. Under this charter villages came into existence and a form of local self-government was established; but after New Netherlands fell under the authority of the English, the local government was so modified as to make it more like that of New England.

Topics.—Settlement under Dutch West India Company.—The patroon.—Later provision for small holdings.—Rise of villages.

References.—Fiske, *Civil Government*, 79, 110, 111, 150; McLaughlin, *History of the American Nation*, 97–104.

173. The Parish of Virginia.—The town of New England and the parish of Virginia are reproductions of the same institution from different stages of its history. The New Englanders laid stress on its secular character; the Virginians, on its ecclesiastical character. The New Englanders

[1] See § 6.

went back for their model to the earlier English town; the Virginians found their model in the English parish of the seventeenth century. In the Virginian parish the parishioners played a less important part than did the members of the New England town meeting. At first they elected the vestry, who were expected to be the "most sufficient and selected men," usually twelve in number. But later the members of the vestry acquired the power to fill vacancies in their number, and thus the vestry became a self-perpetuating and undemocratic body. It appointed from its members two churchwardens, who were the executive agents of the vestry, and who managed the finances of the parish, guarded the morals of the community, and did whatever they were able to preserve order. Although the officers of the parish performed certain purely secular functions, the affairs of local civil government were largely in the hands of officers of the county.

Topics.—Relation of parish to town.—Parishioners and New England freemen.—The vestry.—The churchwardens.

References.—Fiske, *Civil Government*, 36–39, 41, 48, 59–61, 65, 71–73; McLaughlin, *History of the American Nation*, 164–166.

174. County Government in the South Atlantic States.—The county government of the southern colonies was the outgrowth of the peculiar social conditions that prevailed there. The population was scattered on large plantations and had few interests in common, and the territory occupied by any considerable number of inhabitants was so extensive as to make impracticable a popular assembly or a general county meeting. The local institutions of the southern colonies have been inherited by the States that have succeeded them. "Of necessity, therefore, the administration of all local affairs is intrusted wholly to the county officers, and the political duty and privilege of the citizens begins and ends on election day. The duly authorized officers of

the county are thus charged with the care and control of the county property; with levying and collecting all State and county taxes; the division of the county into election districts; the laying out and repairing of roads and bridges; the care of the poor, the police of the county, and, in general, all county and local affairs." These duties are usually performed by a body called the board or court of county commissioners or supervisors, generally elected by the people. With the development of the system of public instruction, the county has become a unit in the school organization, the teachers being under the direction of a county superintendent. The county is also a judicial district. There are county judges and sheriffs. The sheriff is the chief executive officer of the county judiciary. There are counties in New England, and there are local divisions of the county in the southern States; but these are maintained for the purposes of administration and exercise little or no legislative power.

If we were to describe the government of a county in terms that would be applied to a State, we should say that the legislative power is held by the county board of commissioners, or supervisors, who are elected for terms varying from two to four years, by the voters of the districts into which the county is divided. They deal with questions relating to the limits of the townships and school districts. They have charge of the roads, make provision for taking care of the poor, and supervise the construction and repair of public buildings. They determine in general the amount of money to be raised by taxes, and what expenses are to be met.

Conspicuous among the other officers of the county is the sheriff. He is, however, not the powerful official who appeared under that title in the earlier centuries in England. It is his duty to preserve the peace and order of the county, and to execute the decrees and decisions of the courts of

record. Among the other important county officers are the county auditor and the county clerk. The auditor audits bills against the county, and the clerk keeps the records of the county board. In the county government there are also an assessor, a treasurer, and a number of minor officers. Important among the functions of the county government are the care of the poor and the construction and preservation of the roads.

Topics.—Conditions favoring growth of the county in the South.—The officers of the county and their duties.

References.—Bryce, *American Commonwealth*, i, 568–583; ii, 720; Fiske, *Civil Government*, 48–100, 185; Hart, *Actual Government*, 174–179.

175. Local Government in the Western States.—When the inhabitants of New England and the South Atlantic States went westward and formed settlements in the region of the Great Lakes and in the Ohio and Mississippi valleys, they reproduced where they settled their respective local institutions. The country between the main lines of these two migratory columns was occupied in part by New Englanders and in part by emigrants of the southern States, and governments established in this middle ground had some of the characteristics of the two forms. In some places the county appeared to be more conspicuous than the town, particularly in Pennsylvania, New Jersey, New York, Ohio, Indiana, and Iowa; in other places the town appeared to be more conspicuous than the county. This is the condition in Michigan, Wisconsin, Minnesota, and in the northern part of Illinois. Wherever the influence of the New Englanders was dominant, there the town organization is distinctly recognized. The contest for supremacy between the adherents of the town organization and the supporters of the county government is illustrated in the history of Illinois. New England influence was clearly dominant

in the northern half of the State, while the southern half was settled by pioneers from Kentucky and Tennessee; and, as a consequence of this, the town system prevailed in the north, and the county system in the south. The Illinois State constitutions of 1848 and 1870 provide that any county may adopt the system of township organization "whenever the majority of the legal voters of the county, voting at any general election, shall so determine." Under this power the area of the township system has been extended in Illinois. By a similar method other western States, as their population increases, are adopting the same system, and this movement is attended by a decline in the importance of the county.

In the States where the mixed system prevails—for example, in Pennsylvania, Ohio, Indiana, and Iowa—the towns exercise extensive powers, but not through a democratic assembly as in New England. The voters elect officers who are charged with the public affairs of the township. These officers in Ohio are three township trustees, a clerk, and a sheriff; in Pennsylvania, two or three supervisors, an assessor, a town clerk, three auditors, and two overseers of the poor; in Iowa, three trustees, one clerk, a road supervisor for each road district, an assessor, two or more justices of the peace, and two or more constables. In States of this class, however, the county overshadows the township.

Under the system carried out in surveying the lands of the West, the townships have been laid out with regular boundaries. This system provides that the land shall be divided into ranges by lines six miles apart running east and west. These ranges are numbered from a given parallel north and south, and are divided into townships which are numbered east and west from a standard meridian. The townships are six miles square, and each is divided into thirty-six sections. Each section is one mile square, and

the several sections of a township are numbered as indicated by the following diagram:

SECTIONS OF TOWNSHIP

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

By this system it is easy to describe any section or part of a section it may be desired to refer to. A description of a quarter of a section may run somewhat after this manner: Northwest quarter of section eighteen, township six west, range four north.

Topics.—Town and county in the West.—Local government of Illinois.—Towns under mixed system.—Town officers in Ohio, Pennsylvania, and Iowa.—The boundary and divisions of the western townships.

References.—Bryce, *American Commonwealth*, i, 565–580; Fiske, *Civil Government*, 77–93; Ford, *American Citizen's Manual*, Part I, 64–66.

176. The Government of Cities.—When the Federal Government was established, there were very few cities within the territory of the United States, and these were occupied by only a small percentage of the inhabitants. In the beginning of the twentieth century, there were many cities,

and their inhabitants constituted a large percentage of the population of the country. About one-third of the inhabitants of the United States were then living in cities.[1] The establishment of an efficient municipal government is, therefore, the most important political undertaking before the nation. The local governments of the townships and the counties are not suited to large numbers of persons living within the narrow limits of a city. An English writer on American institutions says, "There is no denying that the government of cities is the one conspicuous failure of the United States." The condition of things provoking this criticism is in great measure due to the attempt to govern large cities under a form of government adapted to rural communities. At present a city government embraces executive, legislative, and judicial departments.

The head of the executive department is the mayor, who is elected directly by the voters of the city. There are, besides the mayor, certain executive officers or boards in charge of important public interests, such as the schools, the parks, and the police. These officers or boards are sometimes appointed by the mayor, sometimes elected by the voters, and sometimes chosen by the municipal legislature.

The city legislature, or city council, is sometimes composed of one chamber and sometimes of two. The members are elected by the voters of the city. In about three-fourths of the cities the municipal council consists of a single house, the members of which are usually elected as representatives of the several wards. In some cases, however, they are elected by a general ticket, and in other cases they are elected from municipal districts into which the city is divided. When the legislative branch of the city government consists of two houses, the members of the upper house are

[1] In 1790 3.4 per cent of the total population lived in the cities of 8,000 inhabitants or more; in 1820, 4.9 per cent; in 1850, 12.5 per cent; in 1860, 16.1 per cent; in 1890, 29.2 per cent; and in 1900, 33.1 per cent.

sometimes elected by a general ticket, and in other cases they are elected from election districts, while the members of the lower house represent the wards. The powers exercised by the municipal council are such as are conveyed to it by the municipal charter. Thus the powers of the municipal legislature, like the powers of Congress, are essentially enumerated powers. Its main function is the passing of ordinances relating to all branches of the municipal administration, including all phases of municipal taxation and expenditure.

The city judiciary is composed of judges, either elected by the city voters or appointed by the State.

The likeness of the general form of this government to that of a State becomes especially evident when the charter is made to appear as the city's constitution. This charter is an act of the State legislature. It is, however, sometimes drafted by a committee of freeholders and adopted by the voters of the city before it is submitted to the legislature. It is then introduced as a bill and passed like any other bill.

Where the number of city officials to be elected is large, the voters have great difficulty in voting intelligently. This has provoked inquiry as to the possibility of so ordering the government that fewer officials will have to be elected. In this direction are moving also those persons who are advocating a more centralized form of city government, who are urging the plan of electing the mayor and a few of the principal officers, endowing them with large powers of appointment, and holding them responsible for the economical and efficient administration of the city's offices. But hitherto the majority of the cities of the United States have been governed under organizations like that described—under a non-centralized system—and have almost universally been badly governed.

In attempting to govern cities, the people of the United

States have shown how completely they are dominated by a single idea of governmental form. This form is that which they have applied to the nation and the State, and which has had its most noteworthy success in rural communities, such as the forest cantons of Switzerland, the English colonies in America, and the United States during the early decades of the nineteenth century. When the people of this country found themselves face to face with the practical problem of governing large cities, they did not set to work independently to find an organization suited to the government of compact masses of persons with immense financial interests, but instinctively applied to them our traditional form of government. The great city was treated just as rural districts were treated—as a political body to be governed by an elaborate political organization.

The main public activities of a great city are, however, not political but economic. They comprehend constructing and cleaning streets; providing facilities for disposing of sewage; controlling the construction of buildings and means of transportation; employing and paying teachers and other municipal employees of various grades; providing light and water for public and private use; and doing numerous other things that fall within the field of practical economics. The business, therefore, devolving upon a city government is not, either in extent or variety, largely different from that performed at present by certain great industrial corporations. The president of such a corporation wishes a few persons trained technically and by experience for the different branches of work to be done—men on whom he can depend to manage the several departments assigned to them, and who will be accountable to him. If, instead of following this method, he were to introduce an organization like that of any one of our cities, if he were to gather for his assistance two large bodies of men more or less ignorant of the task in hand and entirely without ex-

perience in this kind of undertaking, his corporation would collapse under the stress of competition with other corporations more wisely organized. But our cities are able to keep up their clumsy and wasteful processes, because they are not in a competitive undertaking. If they make wasteful blunders, if they are on the losing side of their economic transactions, it is all covered by public funds drawn from the taxpayers. Into the management of their cities the American people have instinctively carried their traditional form of government. Maintaining the form has been more to them than securing the result of good administration. When one regards the general enlightenment of the nation, its pretension to high political standing, and then considers the governmental condition of many of the cities, it does not seem extravagant to affirm that they constitute a national disgrace. The leading nations of Europe reach better results. By a system which centralizes power and provides for individual responsibility, the administration of municipal affairs in all of these nations is rendered more efficient and more economical than the municipal administration of American cities.

Topics.—Urban and country population.—General character of city government in the United States.—General form of city government: the executive; the legislative; the judiciary.—Likeness to State government.—Difficulty in electing city officials.—Municipal affairs compared to affairs of a private corporation.—Centralization and individual responsibility.

References.—Bryce, *American Commonwealth*, i, Chap. L; Fiske, *Civil Government*, 98–140; Ford, *American Citizen's Manual*, Part I, 66–83; Hart, *Actual Government*, Chap. XI; Cooley, *Constitutional Law*, 343–345.

FOR ADVANCED STUDY

The Town and the County.—Howard, *Local Constitutional History;* Cooley, *Constitutional Law*, Chap. XVII; Cooley, *Consti-*

tutional Limitations, Chap. VIII; Ford, *American Citizen's Manual,* Part I, Chap. II; Hosmer, *Anglo-Saxon Freedom,* Chap. XVII; Hinsdale, *American Government,* Chap. LV; Goodnow, *Comparative Administrative Law,* i, 162–233; Bryce, *American Commonwealth,* i, Chaps. XLVIII, XLIX; A. de Tocqueville, *Democracy in America,* i, Chap. V; Fiske, *Civil Government,* Chaps. II–IV.

The Municipal Council.—Eaton, *Government of Municipalities,* Chaps. X, XI; Dillon, *Municipal Corporations,* i, Chaps. X–XII; Conkling, *City Government,* Chap. III; Goodnow, *Municipal Problems;* Fairlie, *Municipal Administration,* Chap. XVII; Wilcox, *Study of City Government,* 143–179; Mathews, *City Government of Boston.*

The Government of Municipalities.—Bryce, *American Commonwealth,* i, L–LII; ii, LXXXVIII–LXXXIX; Conkling, *City Government;* Cooley, *Constitutional Law,* Chap. XVII; Cooley, *Constitutional Limitations,* Chap. VIII; Dillon, *Municipal Corporations;* Eaton, *Government of Municipalities;* Fairlie, *Municipal Administration;* Goodnow, *Comparative Administrative Law,* i, 162–233; Goodnow, *Municipal Home Rule;* Wilcox, *Study of City Government.*

The Powers of the Mayor.—*Yale Review,* viii, 274–288; *Municipal Affairs,* iii, 33–60; National Conference for Good City Government, *Proceedings,* 1898: 71–80, 152–219; 1900: 119–126, 136–146; *Political Science Quarterly,* 2: 291–312; Fairlie, *Municipal Administration,* Chaps. XVIII, XIX; Eliot, *American Contributions to Civilization,* No. 7; Parker, *Municipal Government in Massachusetts,* 14–24; Durand, *Council* vs. *Mayor* (*Political Science Quarterly,* 15: 426–451, 675–709).

The Beginnings of the Public School System.—Martin, *Evolution of the Massachusetts Public School System;* Bush, *Higher Education in Massachusetts;* Boone, *Education in the United States;* Adams, Editor, *Contributions to American Educational History;* United States Bureau of Education, *Circulars of Information.*

Municipal, State, and Federal Debts.—Adams, *Public Debts;* Noyes, *Thirty Years of American Finance;* Kearny, *Sketch of American Finances;* Scott, *Repudiation of State Debts;* Fairlie, *Municipal Administration,* Chap. XIV; Adams, *Science of Finance,* Book III.

City Streets.—*Popular Science Monthly,* 56: 524–539; Fairlie, *Municipal Administration,* 227–238; Lalor, *Cyclopædia,* i, 464; *Nation,* 49: 124, 125, 162, 163.

Municipal Socialism.—*North American Review,* 172: 445–455; *Arena,* 19: 43–53; 25: 198–209; *Forum,* 32: 201–216; *Independent,* 53: 2633–2636; 47: 569–579; 52: 1165–1168; *Engineering Magazine,* 5: 725; 9: 44; *Cosmopolitan,* 33: 425–435.

The Poor of the Great Cities.—Riis, *Battle with the Slums; North American Review,* 161: 685–692; *Atlantic Monthly,* 83: 163–178; Riis, *Tenements; Scribner's Magazine,* 16: 108–117; *Century,* 53: 247–252; 45: 314–316; *Forum,* 19: 495–500; *Review of Reviews,* 6: 720, 721; *Scribner's Magazine,* 11: 531–556; 697–721; 13: 357–372; 14: 121–128; 17: 102–114; *Seventh Special Report* of the Commissioner of Labor, 1894.

The Sanitation of Cities.—*Forum,* 20: 747–760; *Outlook,* 69: 728–730; *Harper's Magazine,* 71: 577–584; *North American Review,* 161: 49–56; *Outlook,* 62: 416; 66: 126–128.

CHAPTER XIII

THE INDIVIDUAL CITIZEN IN RELATION TO THE GOVERNMENT

177. The Minor.—The first specific act of the Government with particular reference to the individual citizen is the registration of his birth. In the United States this registration is much less complete than in some other countries. It is made by different officers in different parts of the country. In the New England town it is made by the town clerk. In other places the health officer keeps a record of all births, and this record is deposited in the office of the county recorder.

The period of minority extends, according to the common law, till the age of twenty-one years for both sexes. In some of the States, however, young women are deemed to be of age at eighteen. Before becoming of age a person cannot do any act to the injury of his property that he may not rescind when he attains his majority. But during a part of his minority, that is, after the age of fourteen, he is held to be responsible for crimes committed; for it is presumed that in the period between fourteen and twenty-one he is able to discriminate between right and wrong conduct. Before the age of fourteen there is a strong presumption of innocence, a strong presumption that a child has not a sufficient knowledge of conduct to bring any act of his into the same class with the criminal acts of mature persons. This presumption may be overcome by evidence. It may be shown that the child appreciates the criminality

of his conduct, and is thus guilty in the same sense that the mature criminal is guilty. After fourteen he is treated, as to all criminal charges, as an adult.

If a minor owns land, it can be sold only by direction of a court; and if the guardian would exchange the minor's money or other personal property for land, he must first be authorized by a court to do this.

The resident of the United States as a minor enjoys the protection of the laws, but is unable to vote. Property may be held for him by a guardian or a trustee. If he makes contracts they cannot be enforced against him; for he may successfully set up as a defense that he is not liable because he is a minor. If, however, he has made a contract for necessities, it may be enforced against him. Under the designation of necessities are embraced whatever things are needful for the minor's support in his proper station of life, including a certain expenditure for education. The fact that a minor cannot be legally bound by contracts with respect to other matters makes it inconvenient and undesirable for him to attempt to carry on business in his own name. If a minor is engaged by a person of age for labor or for service of any kind, the courts will enforce the contract concerning wages which he may make with his employer. His father, or his legal parent, has the right to receive the wages. The parent may, however, renounce this right, and thus, emancipating the minor, make it possible for him to collect and hold his wages.

Topics.—Registration of births.—The period of minority.—The minor's property.—Contracts by minors.

References.—Kent, *Commentaries*, ii, 233–245; Smith, *Training for Citizenship*, §§ 58, 59, 394.

178. Education.—Education is counted as one of the minor's legally recognized necessities. It is also one of the things which it is the duty of the parent to furnish his

child. It is, moreover, a subject which a republic cannot neglect without endangering its free institutions. The education required may be obtained either in private schools or in public schools. It is extremely important for the Republic to have all of its citizens educated, yet there is a possibility that private enterprise will not provide as many schools as are needed. These facts have made it seem advisable for the Government to establish and maintain a system of public instruction. Many of the States have, moreover, passed laws requiring children between certain ages, as from the eighth to the fourteenth year, to attend school. This is what is known as compulsory education. From Massachusetts, where public instruction was first established in the colonies, the system has extended to all parts of the country. The maintenance of public schools has also been made an important part of the governmental policy carried out in Porto Rico and the Philippines.

In establishing a government for the territory northwest of the Ohio River, Congress affirmed in the Ordinance of 1787 that "Religion, morality, and knowledge, being necessary to good government, and the happiness of mankind, schools and the means of education shall forever be encouraged." A certain portion of each township, the sixteenth section, was set apart for the support of public schools. In States admitted since 1850, two sections in each township have been transferred from the Federal Government to the several States to be used for this purpose. Land warrants for 10,000,000 acres were given to the States in 1862 for the support of agricultural colleges. The lands called for by these warrants might be located wherever there were unclaimed public lands.

The public schools do not present all the opportunities for education offered to American boys and girls. There are also many private schools which they may attend.

These are supported by gifts or endowments made by private persons, or by church organizations. The church schools it is naturally expected, besides rendering service in advancing the general education of the nation, will be the means of attaching many young persons to the churches supporting them. It is expected, moreover, that in the large number of colleges maintained by the churches a desire will be aroused in many students to prepare themselves to serve the church as priest or minister.

Topics.—Education one of the minor's necessities.—Public instruction.—Compulsory education.—Education in the Northwest.—Private schools.

References.—Kent, *Commentaries*, i, 239, 240; Smith, *Training for Citizenship*, §§ 12, 40, 58, 318, 391–397.

179. The Schools.—There are several grades of public schools: (1) The "common" schools in the country districts; (2) the primary and grammar schools; (3) the high schools. The second and third classes of schools are in the larger towns and cities. The "common" schools and the primary and grammar schools are largely maintained by the State school fund. The high schools are generally supported by the cities or union districts in which they are established. General control over the public schools of a State is exercised by a State superintendent of education, and more immediate direction by county superintendents. For the Philippines there is a general superintendent for the whole archipelago and a division superintendent for each of the school divisions. A district school board or school committee, consisting of three or four members, is the governing body of the district in matters relating to schools. It employs the teacher or teachers, and conducts all the business connected with the maintenance of the school. The school board acts as a corporate body, the individual members separately exercising only such authority as is conferred

upon them by the board. In many of the States women can vote for school trustees, and may be elected and may serve as members of the board. The trustees, or members of the board, are not expected to interfere in the internal affairs of the school. This is the province of the teacher, who, in addition to the work of carrying on the instruction, is expected to maintain discipline among the pupils. But in case unjust punishments are imposed, appeal may be made from the teacher to the superior authority of the school board or the courts. The courts will generally sustain the teacher who imposes corporal punishment, but will insist that such punishment be reasonable.

Topics.—Classes of public schools and their support.—General control.—The teacher.

References.—Smith, *Training for Citizenship*, §§ 42–50, 64, 76, 102, 103, 130, 277, 301; Hart, *Actual Government*, 535–554.

180. **Marriage.**—The individual citizen who would marry finds himself under restrictions established by the Government. He must be of sound mind, or have sufficient understanding to deal with discretion in the ordinary affairs of life. Idiots and insane persons, not being competent to make a contract, are unable to make a legal marriage. As the basis of marriage is consent, a form of marriage procured by force or fraud is void. And no lawful marriage is possible, except of persons who have arrived at the age of consent. This age, by the common law, is fixed at fourteen in males and twelve in females. English law borrowed this age from the Roman law. It was the established age in France before the French Revolution, but under the Code Napoleon the age of consent was raised to eighteen for young men and fifteen for young women. For the ages fixed by the common law, other ages may be substituted by statutes. "The consent of parents and guardians to the marriage of minors is not requisite to the validity of the

marriage." This rule of the common law does not coincide with the practice as regulated by State statutes in many cases, where a more advanced age or consent of parents is required. Nor does it coincide with the practice of many European countries, where the marriage of minors is void without the consent of the father, or of the mother if she be the survivor.

Topics.—Persons not competent to marry.—The age of consent.—Marriage of minors without consent.

References.—Kent, *Commentaries*, ii, 75–93.

181. The Family.—With marriage and the birth of children, a new family is established. The family may be called a natural society, as distinguished from a political society, since it has its basis in the natural instincts and affections of human beings. It maintains in all times essentially the same form, whatever may be the attitude of the government toward it. In its narrower limits it consists of father, mother, and children. Under the laws of ancient Rome, the father as head of the family had larger authority over the other members than is exercised by the head of a family in this country. In Japan matters relating to the family are controlled rather by social customs than by specific laws enacted by the government. But everywhere, in spite of minor differences, it is the same kind of organization or society. Everywhere the children are dependent on their parents for a long period, and the parents exercise over them complete authority. But parental authority involves parental duties: the duty to support the children during the long period of helplessness, the duty to care for them when sick, the duty to clothe them, and the duty to educate them properly. The children, on the other hand, owe to their parents obedience; and the habitual obedience of the child to parental authority prepares him

for obedience to the higher authority of the state when he shall have become a mature citizen.

The income of the family constitutes a common fund, which is expended for the good of all the members. This fund is controlled by the father, unless by special provision the control of a certain part of it is left in the hands of the mother. Whatever property of the family is not thus excepted may be disposed of by will by the father at his death. If no will is made, the property is divided according to law and distributed to the mother, if the mother survives the father, and to the children. There is, however, certain community property of the family which the husband cannot dispose of without the consent of the wife. Such an item of property is the household; and there are certain articles of personal property that cannot be taken from the family under the law without the consent of the husband or the wife or both. Such articles are the household furniture, clothing, and tools necessary to enable the householder to carry on his business or trade.

Topics.—Nature of the family.—Head of the family in Rome.—Family in Japan.—Parental duty and authority.—Family income.—Distribution of property on the death of the head of the family.

References.—Smith, *Training for Citizenship*, §§ 31–37, 169.

182. Master and Servant.—In the earlier centuries, among many peoples the family was thought of as made up of parents, children, and a slave or slaves. The Greek philosopher Aristotle included the slave in his view of the ideal family. But the disappearance of slavery in enlightened society has left the modern family composed of parents and children. The slave, therefore, as a kind of servant, or as a member of a household, may be neglected here. But a consideration of the affairs of American life make it necessary to take account of hired servants and their relation to their employers. This relation rests altogether on contract.

The servant is bound by contract to render service; and the employer, to pay stipulated wages. "But if the servant, hired for a definite term, leaves the service before the end of it, without reasonable cause, or is dismissed for such misconduct as justifies it, he loses his right to wages for the period he has served. A servant so hired may be dismissed by the master before the expiration of the term, either for immoral conduct, willful disobedience, or habitual neglect."[1] It is held that a servant who commits a crime, although it may not be immediately injurious to his master, cannot recover his wages. "A person hired by the year cannot quit the service without forfeiting his salary, nor can he be dismissed at pleasure, or without just cause, and thereby be deprived of it."[2] But a domestic servant may, by the custom respecting him, be dismissed on a month's notice, or on the payment of a month's wages, although he may have been hired for a year. If his employer sends him away without just cause before the end of the term, he is entitled to his full wages for the term.[3] The master is responsible for the act of the servant, when the act is done by the authority of the master. This holds true whether the act under consideration is the formation of a contract or the infliction of an injury.

Topics.—The slave in the early family.—The modern hired servant.—His tenure of position.—Master's responsibility.

183. Individual Control of Property.—When the citizen becomes of age, he enters into the full control of any property that may have legally belonged to him as a minor. At the same time he obtains the general right to acquire property; to hold, enjoy, and transfer it; and to transmit it

[1] Kent, *Commentaries*, ii, 258.
[2] Kent, *Commentaries*, 259, note.
[3] Kent, *Commentaries*, ii, 259, note.

by inheritance. This freedom is supported by the belief that in its enjoyment by individuals the public welfare will be more surely advanced than by any other means. The right of an individual citizen to hold a certain piece of property is, however, limited by the superior right of the state. If the property in question is needed for some public use, it may be taken by the state under the state's right of eminent domain, but only after having given proper compensation to the individual owner. Another condition to which the owner of private property is subject, is that he must pay such taxes as are imposed by the Government.

There are many instances when use or destruction of private property by persons other than the owners is lawful. If a common highway is out of repair, a person entitled to use the highway may lawfully go through an adjoining private inclosure. If a fire is raging in a city, it is lawful to destroy houses to prevent the spreading of the conflagration.

Topics.—Right to control individual property.—Conditions of this right.—Destruction of private property for the public good.

References.—Kent, *Commentaries*, ii, 325–340; Smith, *Training for Citizenship*, §§ 8, 16, 31, 37, 74, 125, 131, 180.

184. **Voting.**—On reaching the age of twenty-one, the citizen of the United States prepares to take part in the government by voting for local, State, or Federal officers, or by voting on propositions submitted to the people for their decision, such as amendments to a State constitution, or propositions to issue municipal bonds, or other questions that are referred for decision to the popular vote. The requirements that must be fulfilled before he can vote are fixed by the State. As each State fixes these requirements independently, it is not to be supposed that they will be uniform throughout the Union. But since the adoption

of the Constitution, there has been manifest a tendency to extend the suffrage by making fewer requirements of persons desiring to become voters. In almost all the States at present no property qualification is required. Rhode Island, New Hampshire, Virginia, and North Carolina are exceptions. In each of these there is still a property qualification. Practically all male citizens over twenty-one years of age who have been resident in the State and in the town or county for some brief period are entitled to vote. In four States—Colorado, Idaho, Wyoming, and Utah—women have the suffrage. In about two-thirds of the States, the citizen is obliged to register before he is permitted to vote. If he can vote in the State for members of the lower house of the State legislature, he can vote in Federal elections—that is to say, for members of the House of Representatives or for presidential electors.

Topics.—Qualification of voters.—Woman suffrage.

References.—Smith, *Training for Citizenship*, §§ 85, 107, 304; Hart, *Actual Government*, 72–85.

185. The Citizen and the Political Party.—Having become a voter and assumed control of his property, the citizen may wish to have a larger part in the affairs of the Government than that represented by voting. He, therefore, allies himself with some one of the political parties. He may not agree fully with all of the principles of any of the existing parties; but he attaches himself to that one whose principles most nearly coincide with his own, or with that one to which his father belonged, or, perhaps, with that one which happens to be dominant in his community. This party, like all political parties, he finds to be simply a voluntary association of citizens who use it as a means for putting some of its members into offices of the Government, and for making its principles determine the conduct of public affairs.

The political party is a voluntary association and has no authority like that exercised by Government; yet it has an organization of its own, which embraces committees for local, or county, interests, committees for State interests, and a national committee for the direction of the party's national affairs. The county committee consists of one or more members from each township, and from each ward of the cities. The members of the county committee are selected or appointed by a county convention of members of the party. The county convention determines, moreover, of how many members the county committee shall consist. The officers of the county committee are a chairman, a secretary, and a treasurer. It is the duty of this committee to assist in carrying out the party policy; to fix dates and places for holding county conventions; to collect and disperse funds for defraying expenses of election campaigns, and to procure and distribute pamphlets and papers in advocacy of party interests, and to provide for political meetings.

By allying himself with a political party, and working for its interests, the citizen may, perhaps, become the representative of his township, or ward, in the county committee; and by virtue of this position he comes to be considered a party leader in his township or ward. In this capacity he becomes the local manager of the party's affairs. He calls to order the primary, and has more or less influence in determining its action. The primary is a meeting of the members of the party in the township or in the smallest political division. It is held for the purpose of nominating officers to be voted for at an approaching election, or of naming delegates to a larger party convention. There is a certain distinction between a primary and a caucus, but it is not always maintained in practice. A caucus is a meeting of members of a party to decide on measures or persons to be presented for the consideration of the body

that has the right to take definite action. If a primary is held to appoint delegates to a convention, a caucus may be called to draw up a list of names to be voted on by the primary. The caucus may consist of a part or all of the members of the primary. The list of names to be presented is called a "slate." Sometimes a "slate" is prepared and presented by a very few persons instead of by a numerously attended caucus. The primary itself, inasmuch as it is a meeting to present candidates to be voted for by another body or by the voters of a town or other district, may be called a caucus.

Delegates are persons appointed to represent the party members residing in the township or any other district that is individually represented in the convention. They act as agents of the voters. Sometimes resolutions are passed instructing them; but, if they have no such instructions, they vote in the convention as they please. The primary nominates party candidates for township or precinct offices; but candidates for county or State offices are nominated by conventions composed of delegates from subordinate districts, such as towns or counties.

Topics.—Choice of party.—Nature of a political party.—County, State, and national party committees.—The county convention.—The primary.—A caucus.—Delegates to a convention.

References.—Macy, *Political Parties in the United States;* Fiske, *Civil Government,* 128, 129, 255, 273, 274.

186. The County Convention.—If several persons are chosen at a primary as delegates to a county convention, these persons constitute the delegation from the town or precinct where they are chosen. The chairman of the delegation carries a written statement signed by the chairman and secretary of the primary, which is evidence that the persons named have been chosen delegates to the convention. This writing constitutes the credentials of the delegation.

The chairman of the county committee calls the convention to order at a time previously fixed. Three committees are then appointed: one on organization and order of business; one on credentials; and one on resolutions. these committees are sometimes appointed by the chairman and sometimes by vote of the delegates. While the committees are preparing their reports, the convention either takes a recess or listens to speeches. In the latter case an opportunity is presented for the ambitious delegate who is at the same time an effective speaker to win the favor of the convention, and thus attain a more conspicuous place in his party. The committee on credentials receives the credentials of the delegations from the several townships, wards, or precincts; and in case there are no rival claimants, the persons named in the credentials will be accepted. But if each of two groups claims to be the proper delegation from a certain township or ward or precinct, the committee will recommend the acceptance of the delegation which, from its credentials, appears entitled to seats in the convention.

The proceedings in the convention are held under an order of business recommended by the committee on organization and order of business. These proceedings usually cover the following points:

1. The temporary officers of the convention are made permanent, or other persons are elected as permanent officers.
2. The report of the committee on credentials is considered.
3. The nomination of candidates for the various offices in question is made. If it is the purpose of the convention to appoint delegates to a higher party convention, a vote is taken on a list of such delegates.
4. The committee on resolutions reports.
5. A new county committee is appointed.
6. The convention adjourns.

In conducting a county convention, as in conducting practically all other public meetings, the rules of procedure laid down in parliamentary law are observed.

Topics.—Delegation to a county convention.—Procedure of the convention.—Order of business.

References.—Macy, *Political Parties*, 36; Smith, *Training for Citizenship*, 256–266; Dallinger, *Nominations for Elective Office*, Index.

187. The Party and the Government.—There is a certain similarity between the organization of a party and the organization of a republican government. Both have their primary, secondary, and supreme assemblies. The local, county, State, and national committees may be likened to the small bodies of executive officers in the town, the county, the State, and the national Government. A noteworthy difference between the party organization and the Government organization is seen in the fact that the action of the Government officers or assemblies is binding on all persons within their respective jurisdictions; while the action of the party committees or assemblies binds no one legally. The purpose of the party is to put persons into the offices of the Government who will carry out the policy of the party. The purpose of the Government is, in theory, to carry out that policy which will bring to the communities subject to its jurisdiction the maximum of advantage; in practice, it is to carry out the wishes of the dominant party. At this point the party becomes merged in the Government. Thus we see that the real design of the party is to put some of its members into the offices of the Government, and through them to make its policy the policy of the Government.

Topics.—Similarity of party and Government organizations.—Difference of power.—Purpose of party and purpose of Government.—Party merged in the Government.

References.—Macy, *Political Parties*, 1–73; Dallinger, *Nominations for Elective Office;* Ford, *The Rise and Growth of American Politics*, 90–106, Index.

188. Party Organization in a State.—At the head of the party organization in a State stands the State central committee, which is formed by different methods in different States. In Massachusetts it consists of one member from each senatorial district. In New York the Democratic State committee is chosen by the State convention. In many States the members of the State committee are elected by the county conventions. The State committee exercises general control over the party affairs of the State. It calls the State convention of the party, and at the same time names the time and place of the meeting. The first State convention of New York was called in 1824. In fixing the membership of this convention, it was provided that each county should send as many delegates as it had members in the legislature. Prior to calling this convention, the State officers had been nominated by a State legislative caucus. This, however, had encountered an opposition similar to that directed against the congressional caucus, and both were overthrown about the same time. The last legislative caucus in New York was held in 1824. After the convention system of nomination was inaugurated in New York, the legislative caucus continued to nominate the party candidates for the United States Senate. In the other States there was effected essentially the same transition from the legislative caucus to the State convention as in New York.

Different methods are employed in different States in appointing delegates to State conventions. The State convention is usually called to order by the chairman of the State committee, who acts as temporary chairman of the convention. The secretary of the State committee, acting

as temporary secretary of the convention, reads the call for the convention. On motion by some member of the convention who has been previously agreed upon, the chairman appoints committees on credentials, on permanent organization, and on resolutions. The speech of the permanent chairman is expected to be the opening of the State campaign. The "platform" is read by the chairman of the committee on resolutions. One section or "plank" usually condemns or commends the national administration. The commendation will naturally come from the convention of the party in power, while the convention of the opposite party will quite as naturally find grounds for condemnation. Then follow the balloting for candidates, and the idle motions by the friends of the defeated candidates to make the nominations unanimous.

The business of the State convention differs from that of the national convention in that it usually includes the nomination of a larger number of candidates, owing to the fact that the national judicial and administrative officers are almost all appointed, while many of such officers in the States are elected.

Topics.—State central committee.—Legislative caucus.—Transition to convention.—Procedure of State convention.—Difference in the business of the State and national conventions.

References.—Dallinger, *Nominations for Elective Office*, 74–90; Ford, *The Rise and Growth of American Politics*, 72–325; Macy, *Political Parties*, 57–73.

189. The National Convention.—Several of the early nominations for the presidency were made by the congressional caucus. This was a meeting of the members of the two houses of Congress belonging to one political party. Such a caucus was held in 1800. From 1804 to 1824 meetings of this kind were the recognized agencies for making presidential nominations. They met, however, vigorous

opposition. They were regarded as oligarchical, and as placing in the hands of party representatives functions that should be exercised by the whole body of the party.

With the fall of the congressional caucus the State legislatures in their official capacity made nominations for the presidency. But this method was neither popular nor long continued. Then appeared a joint caucus of the party members of the two branches of the State legislature. But this was only a makeshift, one of several methods tried in the transition from the congressional caucus to the national convention, all of which were unsatisfactory and emphasized the need of a national system of nomination.

The first call for a national nominating convention was issued in 1830. In obedience to this call delegates met in Baltimore in September, 1831. During the next few years the method of nomination by national convention was fully established. The call for such a convention is now issued by the national committee, a body representing the national interests of the party, the members of which are chosen by each national convention and hold their positions for four years. It is the highest of the several grades of committees which embrace national, State, district, county, and local committees. The delegates, or members of the convention, are chosen, two for each congressional district, and four at large by the State convention of the party. In the Democratic Party the choice of all the delegates is still made in some instances by the State party convention. There are two steps in the process of choosing the delegates by congressional districts: (1) The voters in the various cities and towns choose delegates to conventions for each of the congressional districts; (2) each district convention elects two delegates to the national convention, the State convention choosing the four delegates at large.

As soon as the delegates to the national convention are chosen, efforts are made to have them pledged for cer-

tain proposed candidates. At the convention city, a local committee, through its various subcommittees, has made arrangements concerning a hall for the meetings, hotels, transportation, music, telegraphing, the press, the reception, entertainment, and whatever else may be necessary for the accommodation of members or for facilitating the work of the convention. The national committee has arranged the programme. At the appointed time a temporary chairman calls the convention to order; the rules of the preceding convention are adopted; committees are appointed on credentials, on permanent organization, on rules, and on resolutions. The report of the committee on credentials, when made, determines who are entitled to seats in the convention. This point being established, the permanent chairman takes the chair and makes a carefully prepared speech. While waiting for the report of the committee on resolutions, the miscellaneous business of the convention is transacted, after which the "platform" is read. This was at first called "Address to the People of the United States." Following this, an opportunity is given, by calling the roll of the States, for the several delegations to present their candidates. Here follow the nominating speeches, scenes from pandemonium, or displays of extemporized enthusiasm for the nominees, the selection of the presidential candidate, and finally, generally in an anticlimax of enthusiasm, the nomination of the candidate for Vice-President. The convention then, by vote, empowers the national committee to fix time and place for the next national convention, orders the printing of its proceedings, thanks the citizens of the city for their hospitality, and adjourns.

Topics.—Congressional caucus.—Transition to national convention.—National committee.—Procedure of the convention.

References.—Dallinger, *Nominations for Elective Office*, 13–87; See the *Proceedings* of the various national conventions.

190. The Campaign.—A convention held by the other party also nominates candidates for the same offices. Then follows the struggle of each party to secure a sufficient number of votes to elect its candidates. The two parties through their organizations do whatever is possible to advance the interests of their respective candidates; but the candidates themselves are expected to look after their own interests and get votes for themselves by the use of any or all of the means known to the art of politics. This contest is known as a political campaign. The political convention held in the county, and the campaign which follows it, are types of the conventions and the campaigns which are employed for the nomination and election of State and national officers. But money is required to carry on even a peaceful campaign; and in order to meet the necessary expenses, the candidates are expected to make liberal contributions. Some candidates are able to do this without inconvenience, but others find it burdensome. Property may, perhaps, have to be mortgaged. Once in office with a low salary, there appear temptations to accept illegitimate gains to compensate for the expenses of election. After a period the shifting will of the people causes the elected officer to be superseded; and he returns to private life, sometimes to find that his neglect of his business or his profession has rendered it necessary to make a new beginning.

When the time set for ending the voting has been reached, the proper officers count the votes that have been cast and record the result. Where one party is much more numerous than the opposition, no difficulties are likely to arise. But when the two parties are of nearly equal strength, the candidate who is reported as defeated may think it worth the while to question the report. Recognizing that a slight error discovered in the counting might change the decision, he demands a recount. In such a case the ballots

are collected from all the precincts of his district and carefully inspected and recounted under such guarantees of honesty and accuracy as the Government may provide. The board of canvassers who act in this case may make a report, but either candidate may appeal to the courts. In case the election is for a member of a legislative body, it remains with that body to consider the contested election and to render a final decision.

Topics.—A political campaign.—Contributions to campaign expenses.—Counting the vote.—Contested elections.

References.—Smith, *Training for Citizenship*, §§ 255, 268.

191. Acquiring Government Land.—If a citizen wishes to acquire land owned by the United States, he finds that this may be done under the Homestead Laws, under the Preëmption Laws, or under the Timber Culture Act.

1. Under the Homestead Laws, if he is twenty-one years old, he may claim 160 acres of the unsold land of the United States, provided he is not already the owner of this amount of land in any State or Territory. Before he can acquire a title to the land he must enter it in the proper land office, live on it continuously for five years, and pay the charges of the land office.

2. Under the Preëmption Laws, if he does not already own 320 acres, he may settle upon a tract of 160 acres or less. Having built a house on the land, and lived on it for one year, he may purchase it for either $2.50 or $1.25 per acre. The larger price is for land in the alternate sections along railroads where the other sections have been granted to the railroads.

3. Under the Timber Culture Act, he may have the right to 160 acres of land valued at $1.25 per acre if he will plant ten acres of timber, or eighty acres at $2.50 per acre if he will plant five acres of timber.

Topics.—Methods of acquiring Government land: 1. Homestead Laws; 2. Preëmption Laws; 3. Timber Culture Act.

References.—Hart, *Actual Government*, 335–341; Smith, *Training for Citizenship*, §§ 64–73; Fiske, *Civil Government*, 81–88, 263, 264.

192. Real Property.—The citizen who has either inherited property or accumulated it by his trade or profession finds it composed of two kinds: real property and personal property. Real property is called also real estate. It includes land and whatever is made part of it or is attached to it by nature or man. Trees, water, minerals, houses, and all other permanent structures are embraced in real property. Water that rises outside the limits of one's land and flows in a stream through it is not the property of the owner of the land. He may use it to turn a mill as it flows along, but he may not exhaust the stream. Persons who own land on the stream below have also a right to use the water.

Ownership of the soil carries with it the right to take the wild animals or game found on the land, subject to whatever regulations the Government may make as to the time when the killing of game is permitted.

In speaking of the ownership of land in the United States, we usually mean that full ownership presumed in the title of *fee simple*—a title which confers an unrestricted power of alienation. Land held under this title passes to one's heirs like any other property. Besides this absolute ownership, land is sometimes held for brief periods in consideration of paying a certain annual rent, sometimes for the period of one's life, and sometimes for a long definite period, as for ninety-nine years.

In some of the States a distinction is made between property acquired before marriage and property acquired after marriage. Property acquired before marriage is called separate property; that acquired after marriage is

called community property. Community property embraces all property acquired by the husband, wife, and children while living together after marriage.

In transferring real property a deed is given by the seller to the buyer. A deed is a document describing the property in question and certifying that it is transferred from one person to another, both of whom are named in the document. After a deed has been properly signed, not only by the seller, but also by his wife, in case he is married, it is recorded in books kept for that purpose in the office of the recorder.

Sometimes the owner of land needs money, but does not wish to sell his land. In this case he borrows money and pledges his land or some part of it as security. He does this by giving to his creditor a note and a mortgage. A mortgage is a document by which property is conveyed as security, under the condition that it shall become void on the payment of the debt thus secured. It accompanies the note which contains the promise to pay. If the money borrowed and the interest agreed upon are not paid at the time specified, the creditor may foreclose the mortgage. Under this process the land is sold and the debt is paid from the proceeds of the sale. If the proceeds of the sale are not sufficient to pay the debt, the creditor has still a claim on the debtor. If by the sale more is received than is required to pay the debt, the excess goes to the debtor.

It may happen, however, that the person giving his note, or promise to pay, either for money borrowed or for goods received, may not wish to convey his property under a mortgage as security. In that case he may seek to secure his note in some other manner. He may, perhaps, find a person who is known to have a sufficient amount of property, and who may be willing to guarantee that the note will be paid. This person is said to indorse the note. He writes his name on the back of it, or sometimes under the name of the person who signed it originally. By thus indorsing it,

he promises to pay it if the debtor fails to do so. The creditor may be willing to accept a note thus indorsed instead of a mortgage.

Such a note, or a written promise to pay, is called a promissory note; and, when indorsed, it carries two promises: that of the original signer and that of the indorser. The person who gives his note gives it as a promise to pay money he has borrowed, or to pay for valuable goods he has received. In either case he has in his possession property that he may use for gain. Because he can employ it for gain, he can afford to pay the creditor a certain amount for the use of it. What he pays in this case from month to month or from year to year for the use of the money borrowed or the goods received is the interest. He can afford to pay it, because by using the money or the goods he can gain more than he pays. The creditor is willing to accept the interest rather than to have his money and use it in any other practical way, because he is spared the trouble of business.

Topics.—Two kinds of property.—Water rights.—Game.—Forms of title.—Separate property and community property.—Transfer of real property.—Mortgage and foreclosure.—Indorsements.—Reason of interest.

References.—Kent, *Commentaries*, ii, 230, 325–340; iii, 401; 37–39; iv, 438; Smith, *Training for Citizenship*, §§ 124–136, 247.

193. Personal Property.—Personal property includes a long list of objects: clothing, food, tools, books, furniture, money, and all kinds of valuable things not embraced under the designation of real property. Personal property is sometimes called movable property, because the owner may take it with him. Speaking generally, the title to real property is shown by deed or by the public record, while the title to personal property is shown by possession. It is, however, sometimes possible for one to prove that he is

the owner of a certain object which is in the possession of another person; and it might be possible to show ownership in a piece of land, although all records of its transfer had been destroyed.

Topics.—Definition of personal property.—Title to personal property.

References.—Smith, *Training for Citizenship*, §§ 38, 39, 114, 125, 137, 138, 139, 169; Kent, *Commentaries*, ii, 3–16, 499; Hart, *Actual Government*, 385–392, 409, 410.

194. Transfer of Property by Lease.—All property of whatsoever kind may be transferred from one person to another in various ways. It may be given away or, on the death of the owner, pass to heirs under the law of inheritance. It may be sold, or it may be leased.

A lease, as applied to land, is a contract by which the possession and profits of real estate for a definite period are passed from one person to another. The person who receives the property for the term specified makes compensation to the owner in either money or services, or in commodities. Leases are made for short periods or long periods, or during the life of the tenant. The person who has received the property is called the tenant, or lessee. Unless there is something in the agreement with the owner preventing it, the tenant, or lessee, may sublet the whole or a part of the property that has been transferred to him; but the term for which he sublets it must not be extended beyond the end of the period for which he has received it. If a person holding property under a lease for a number of years —say, for ten years—sublets it for twenty years, this lease is not valid for the whole period, but only for ten years. Sometimes a lease is made for a definite number of years, and the lessee, by an agreement with the lessor, acquires the privilege of renewal. Thus, to illustrate, the lessee may hold a lease for a period of five years; and included in the

terms of the lease there may be a provision that he shall have the privilege of renewing the lease at the expiration of the first period.

Topics.—Methods of transferring property.—Lease.—Terms of leases.—Subletting.—Renewal.

195. Contract of Sale.—A sale is a contract for the transfer of the ownership of property, or for the transfer of the right of property in a commodity, for a price to be paid in money. When the valuable thing given for the commodity is not money but some other commodity, we call the transaction barter. But a sale in its broadest sense includes both sale and barter as here defined. The thing sold must be capable of being passed from the exclusive possession of one person to the exclusive possession of another person. If at the time of the agreement the property which it is proposed to transfer has been destroyed without the knowledge of either of the parties, it is to be considered that no sale has been effected.

The thing sold need not necessarily be a material object: it may be immaterial property, like the relation of a business to the public; for example, the relation of a newspaper to its patrons—its subscribers and advertisers. A contract of sale becomes binding by the mutual consent of both parties to it; that is, when both parties have agreed to its terms. If one person makes an offer of an article or a certain piece of property to another person for a stated price, there is no contract until the second person shall have accepted the offer. By this acceptance the contract is completed.

When the parties have agreed on the terms of the sale, the right of property passes from the seller to the buyer. The sign or evidence that such an agreement has been reached is sometimes the delivery and acceptance of the article sold, and sometimes the delivery and acceptance of papers that represent the property transferred. It is easy

for the seller to deliver into the hands of the buyer a pair of shoes; but it is not so easy to deliver in the same way an ocean steamship or a thousand acres of land. It is in such cases as these latter that papers recording the fact of the sale are transferred. In the case of a sale of land, a paper called a deed passes from the seller to the buyer.

It is held by writers on morals that it is the duty of the seller to disclose any defects known to him in the articles to be sold. But in general the common law adopts the attitude toward selling and buying that is indicated by the phrase, *Caveat emptor*, Let the buyer beware. If the seller "intentionally misrepresents a material fact, or produces a false impression by words or acts, in order to mislead, or to obtain an undue advantage, it is a case of manifest fraud";[1] and the common law affords a reasonable protection against fraud in dealing.

Topics.—Definition of sale.—What transferred.—Evidence of sale.—*Caveat emptor.*

196. Gifts and Bequests.—Property may be transferred from one person to another not only by lease or sale, but also by gift or bequest. By gift, property is conveyed by the owner to another person without compensation. A gift becomes valid on the delivery of the object which it is proposed to transfer. A mere promise to give is not giving; there must be an actual delivery of the object, or a transfer of papers recording the act of donation. At any time prior to the delivery or transfer, the owner may change his intention and refuse to complete the gift. A gift, like a conveyance made for a consideration, may be annulled if it can be shown that the donor was subject to undue influence at the time of making the donation. When gifts have been made complying with the conditions necessary for the perfected transaction, they are generally irrevocable. But

[1] Kent, *Commentaries*, ii, 484.

when they are made for the purpose of defrauding creditors, they are void and may be set aside. However, it is often difficult to prove that a donor in making a gift intended to commit fraud; yet when he knows that the sum of his debts is greater than the value of his property, it is safe to conclude that, if he makes large gifts, they are made with fraudulent intent.

Besides gifts from living persons to living persons, gifts or bequests may be made by a last will and testament to take effect after the death of the testator. This document, signed by the testator, provides directions for a distribution of his real and personal property after his death, and indicates the amount to be received by each of the designated persons.

Topics.—Nature of a gift.—Gift when valid.—Gifts for defrauding creditors.—Bequests.

197. Governmental Protection.—In seeking to protect his person and his property the individual citizen turns for assistance to the Government. The assistance in such a case is given by the courts. If his property is stolen, the courts will condemn the thief to be punished. If he sells goods or loans money, and the debtor refuses to pay him at the appointed time, the courts will assist the creditor in collecting what is due him. If his person or his reputation is injured by an enemy, he turns to the courts for redress. The law, however, does not oblige one to do all those things he ought to do. If a man makes an oral contract to sell a piece of land, or to pay the debt of another person, or to purchase a large amount of personal property, an amount valued at more than $50, he is morally bound to keep his promise, but the Government will not compel him to do it. As the law usually requires that all such contracts shall be in writing in order to be legally binding, the courts will not enforce contracts made orally relating to those things.

Topics.—Recourse of the individual citizen for protection.—Moral and legal obligations.

References.—Kent, *Commentaries*, ii, 3–16; i, 107, 254.

198. A Civil Case.—Civil cases arise generally out of disputes about property. They embrace all actions at law between persons in their private capacity, not involving prosecution for crime. They are brought to enforce the payment of debts, to collect compensation for injury to one's character, person, property, or reputation, or to settle questions relating to the ownership of property. Civil cases not involving debt or damage in excess of $100 are usually tried in the justice's court. Where the amount involved is between $100 and $300, the plaintiff—that is, the person who brings the suit—may begin the case before the justice's court or before the higher court. The case having been instituted, the justice causes the defendant, the person against whom the suit is brought, to be summoned to appear in the court at a time mentioned in the summons, in order to answer the suit introduced by the plaintiff. If the defendant does not appear in accordance with the summons, the judgment will be rendered against him.

In order that the justice may have the necessary information on which to base a decision, it is usually necessary to bring witnesses into court to testify, or to furnish the required information. Under such circumstances an order is issued, signed by the justice, commanding the person named to appear in court at the time specified. This order is called a *subpœna*. The person to whom it is directed is obliged to obey it or be punished for contempt by the court. The trial proceeds either before the justice alone or before the justice and a jury. The plaintiff, assisted by his witnesses and his lawyer or lawyers, presents the facts and arguments which seem to support his contention. Answer is then made in substantially the same manner by the defendant.

When there is a jury in the lower court it renders its verdict with respect to both the law and the facts. In the higher court, the judge charges the jury—that is to say, he states the law applicable to the case—and impresses upon the jury its obligation to decide, from the evidence presented by the witnesses, what are the facts in the case. When the jury of the higher court has reached a conclusion, it delivers it to the judge. This conclusion or opinion of the jury is called its verdict. On the basis of this verdict the judge renders his judgment. When there is no jury,[1] the decision is given by the justice on his own view of the law and the facts as presented.

When the defeated party is dissatisfied with the judgment and believes that a new trial would give a different result, he appeals to a higher court. Before this higher court, at an appointed time, the case is tried again in essentially the same way as in the court where it was first presented. When a final judgment has been reached, the next step is to secure its execution. If the judgment is that money shall be paid by the defendant to the plaintiff, the defendant is ordered to pay the amount specified. If this is not done, an officer of the court is commanded to seize property belonging to the defendant, sell it, and bring the money to the justice within a specified number of days. The justice then pays the plaintiff and the legal charges of the court, or the costs, and turns over the balance to the defendant. In case an appeal is taken, an execution follows only after the conclusion of the final trial and the rendering of the final judgment by the court to which the case has been appealed.

Topics.—The nature of civil cases.—The method of instituting them.—Witnesses and the subpœna.—The jury.—An appeal.—The judgment and the execution.

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[1] See § 200.

199. Crimes.—The acts of the individual citizen are, with few exceptions, voluntary acts. There is thus always before some of the citizens the possibility of falling into crime, or of doing something forbidden by law. If a citizen commits an offense for which the law fixes a light penalty, the crime is called a misdemeanor. Offenses of a graver nature involving the death penalty or imprisonment are called felonies. If the offender aims to overthrow the Government, to levy war against it, or to give aid and comfort to its enemies, the crime is treason. If, having been duly summoned to testify before a court, a person swears willfully and falsely in a matter of grave importance, the crime thus committed is perjury. The willful killing of a human being is murder; but there are circumstances under which the killing of a man is not a crime. If it is done by accident, or by a person not of sound mind, or in self-defense, the act will not merit punishment. If one is guilty of burning another person's dwelling house, or other structure, or his own house when insured, the act is called arson.

Topics.—A misdemeanor.—Felony.—Treason.—Murder.—Arson.

200. A Criminal Case.—If a person under the Government commits a crime, it is expected that he will be arrested and brought before a court for trial. In case the crime is a minor offense, a misdemeanor, he may be tried before a justice of the peace, in what is termed a justice's court. But if the crime is of a graver sort that may be termed a felony, the person accused is arrested and brought before the justice for a preliminary examination. If the justice thinks the person arrested is guilty, on the basis of the evidence presented in the preliminary examination, he orders him held for trial by a higher court. The prisoner is then committed to the county jail to await his trial in the county, or

superior, court. During this period he may be released from the confinement of the jail, provided he will give a bond guaranteeing his appearance at the time set for his trial. The bond must be signed by two responsible persons, who are bound to pay the amount specified in the bond, which is called bail, in case the prisoner fails to appear at the appointed time. The arrest is made under a warrant, or order, signed by a justice, directing a constable or other officer to make the arrest. If the crime for which the person is arrested is a capital offense, like murder, and there is a strong probability that the person arrested is guilty, bail will not be accepted, and the prisoner will be held in jail until his trial. At the time set in the bond, the prisoner is brought before the court and there tried. If he is found to be guilty, the judge orders him to stand up, and then asks him if he knows any reason why sentence should not be pronounced upon him. After he has had this last opportunity to answer, the judge tells him what punishment he is to receive. This is called his sentence. The prisoner thus convicted and condemned is led away by the officers to undergo the punishment that has been imposed in accordance with the law.

Topics.—Process in a criminal case.—Bail.—When bail will not be accepted.—The sentence.

201. Public Charity.—The government has not done its whole duty to the citizens when it has taken possession of criminals and prevented them from preying upon the community, or upon unoffending members of it. In modern times the unfortunates, those who fail in the struggle for existence, are taken under the special protection of the state. In this class are the hopelessly poor, and the helpless orphans; also the insane, the feeble-minded, and other defectives who have no means of support.

When one's efforts have failed, and his strength and courage are gone; when he is without friends or relatives who

are able and willing to support him, he finds that the government has made arrangements under which he may be cared for at the public expense. These arrangements are made sometimes by the town government, sometimes by the county government. The poorhouse is one of the established institutions of the New England town. It is under the general control of three or more overseers of the poor. When the support of the poor is undertaken by the county, this support is usually rendered under the supervision of a subordinate county board, or poor commission.

The insane are usually cared for in larger institutions supported by the State, and carried on by officers appointed by the State government. The need of employing learned physicians and expert attendants makes it advisable to gather the insane persons into large establishments instead of undertaking to treat them in the several towns where they have been accustomed to reside. Sometimes the expenses of maintaining the patients are paid by the towns sending them; in other cases the whole expense of maintaining the asylum is borne by the State at large. In these instances no attempt is made to assign the cost to the towns making use of the institution for the care and treatment of their insane.

Institutions for the instruction of the deaf, dumb, and blind, when established and supported by a State, are to be regarded as a part of the State's undertaking in behalf of education. But when homes are provided at the public expense for the mature but helpless blind, these institutions may be regarded as part of the system of public charity.

Topics.—Relation of the State to the helpless and the defective.—The support of the poor.—The insane.—The deaf, dumb, and blind.

FOR ADVANCED STUDY

Suffrage.—Hinsdale, *American Government,* Chap. LIV; Hart, *Practical Essays,* No. 11; Wilcox, *Study of City Government,* §§ 61–72; Foster, *Commentaries,* §§ 50–59; A. de Tocqueville, *Democracy in America,* i, Chaps. IV, XIII; *Political Science Quarterly,* 13: 495–513; Bryce, *American Commonwealth,* i, 406, 712; ii, 67, 477; Chap. XCVI.

Methods of Nomination for Elective Office.—Bryce, *American Commonwealth,* ii, Chaps. LXIX–LXXIII; Dallinger, *Nominations for Elective Office;* Wigmore, *Australian Ballot System;* Lawton, *Caucus System;* Whitridge, *Caucus System;* National Conference for Good City Government, *Proceedings,* 1901.

Elections.—O'Neil, *American Electoral System;* McKnight, *Electoral System;* Commons, *Proportional Representation;* Eaton, *Government of Municipalities,* Chaps. II, IX; Giddings, *Democracy and Empire,* Chaps. XII, XV; Bryce, *American Commonwealth,* ii, Chaps. LXVI, LXVII; Jennings, *Eighty Years of Republican Government,* Chaps. VII, VIII.

Democracy.—Godkin, *Problems of Modern Democracy,* 1–98, 199–225, 275–311; Giddings, *Democracy and Empire,* Chaps. I–VI, XV, XVI; Borgeaud, *Rise of Modern Democracy;* Eliot, *American Contributions to Civilization,* Nos. 1–6; Lowell, *Essays on Government,* Nos. 2, 4; Moses, *Democracy and Social Growth;* Baldwin, *Modern Political Institutions,* Chap. II; Jefferson, *Writings,* i, 1–110; *American History Leaflets,* No. 18.

The Control and Disposal of the Public Lands.—Hinsdale, *Old Northwest,* Chap. XIV; American History Association, *Papers,* i, 79–247; v, 395–437; iii, 411–432; Johns Hopkins University, *Studies,* iv, Nos. 7–9; Hart, *Practical Essays,* No. 10; Commissioner of Public Lands, *Annual Reports;* Bureau of Forestry, *Reports* and *Bulletins.*

Private Ownership of Land in the United States.—Cooley, *Constitutional Limitations,* Chap. XV; Washburn, *American Law of Real Property;* Lewis, *Eminent Domain;* Hopkins, *Real Property;* Eleventh Census, *Extra Bulletins,* No. 98.

Political Parties.—Macy, *Political Parties;* Morse, *History of Political Parties;* Hammond, *Political Parties in the State of New York;* Ostrogorski, *Democracy and the Organization of Political Parties;* Smith, *Liberty and Free-Soil Parties;* Goodnow, *Politics and Administration,* Chaps. II, III, IX; Bryce, *American Commonwealth,* ii, Chaps. LIII, LIV; Eaton, *Government of Municipalities,* Chaps. III, IV; Ford, *American Politics,* Chaps. VII, XXIII–XXV.

CHAPTER XIV

INTERNATIONAL RELATIONS

202. Relation of the United States to Other Independent States.—Hitherto attention has been directed to the organization of the governments which make up the political system of the United States. Little has been said concerning the relation of the Government of the United States to other governments; but a general consideration of this subject is made necessary by the close relations now existing between civilized nations. Although a sovereign state is said to be independent and to recognize no superior, it is nevertheless expected to regard other sovereign states as its equals; and the existence of a nation or of an individual person among equals imposes certain moral obligations that might not be taken account of in complete isolation. One may own the house in which he lives and the lot on which it stands, but he is morally bound to show in his conduct a decent regard for the wishes and the well-being of his neighbor. A nation that finds itself in the community of nations also is morally bound to show a decent regard for the wishes and the well-being of other nations. For regulating the intercourse of sovereign states, a body of rules and doctrine has gradually come into existence and been recognized as a proper guide for civilized nations with respect to such actions as affect one another. This body of rules and doctrine is known as international law, although, speaking strictly, it is not law at all. Law

in the proper sense of the word is "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him." The rules which make up the body of international law do not conform to this definition; they are the result of mutual agreements or understandings among the nations, rather than commands. No nation is in a position to enforce obedience to them, yet it is agreed that such obedience tends to promote the general well-being and to remove international friction. They have been called the rules of international morality; and what they enjoin, they enjoin as a duty.

Topics.—Relation of Government of United States to other governments.—Equality of sovereign states.—Definition of law.—Nature of international law.

203. Certain Duties Recognized in International Relations.—Important among the duties recognized in international relations is the duty of humanity. War continues and is likely to continue yet many decades; still the fact of war between two nations does not entitle either to wreak vengeance on a captured member of the other nation. War between civilized nations is not a war against individual persons, and such persons falling into the hands of the enemy of their nation are entitled to humane treatment. In view of the mutual dependence of nations because of the differences of their soil, climate, and products, it is affirmed that an obligation rests upon every nation to enter into at least commercial relations with other nations. A strong nation is likely to hold this to be the duty of the weaker nations with whom it wishes to trade, particularly if these nations stand on a somewhat lower plane of cultivation. Western nations have held this to be the duty of certain Oriental states. In her attitude toward other nations, Japan saw fit to pursue a policy of strict non-intercourse from the beginning of the seventeenth to the middle of the nineteenth

century. She neither exported nor imported wares, and permitted neither immigration nor emigration. Western nations insisted on trading with her, and her policy was made to yield to their wishes. If there is a duty under which every nation lies, that obliges it to enter into relations with other nations, it is clearly a duty that admits of many exceptions. The power of a nation to establish such customs duties as will practically exclude foreign wares does not appear to be seriously questioned; and there is not a very wide difference between this policy and the policy of complete commercial isolation.

It is understood that when we speak of international relations we have in mind only such states as, by common consent, are counted as independent. Pirates controlling a large territory do not constitute a state. The commonwealth of New York, from the point of view of international law, does not appear a sovereign state, although more populous and wealthier than many sovereign states: it is not a party in international relations. International relations exist only between sovereign states.

Topics.—International duty of humanity.—War not against individual persons.—Is there a duty of commercial intercourse?—International relations between sovereign states only.

204. Non-Interference.—When it is said that a sovereign state is independent, it is meant thereby, among other things, that it is free from interference by other states. This is the general rule, but there are justifiable exceptions. If a state is at war with another state, it may aid any party or province of the enemy which may be in revolt. When its stability and the well-being of the people are vitally affected by lawlessness permitted by its sovereign neighbor, it may insist that order shall be preserved, and may go even to the extent of forceful interference in behalf of self-preservation.

A state in facing a serious revolt or revolution may call on a foreign state for assistance, and it is not questioned that the foreign state in rendering the required assistance is acting strictly within the limits of international propriety. If the revolutionists stand for liberal government against absolutism, and the nation called upon happens to be in sympathy with the political views of the revolutionists, it need not accede to the request. The view sometime entertained in Europe that the constituted governments might properly interfere without being asked, in order to suppress liberal revolts or republican revolutions, is not to be justified. The unfriendly attitude of the European powers toward the republicanism of France during the French Revolution furnishes a case in point. And at the Congress of Verona, in 1822, the project was agitated of bringing the revolted colonies of Mexico and South America back under the authority of Spain. This project was, moreover, significant in that it gave occasion for President Monroe's utterance which became the basis of the Monroe doctrine.

Topics.—Meaning of national independence.—Duty of non-interference.—Attitude of European monarchies toward the French Revolution and the republicanism of France.

205. The Monroe Doctrine.—President Monroe having requested Jefferson's opinion concerning the project of the Verona Congress and the correspondence between Mr. Canning, England's Prime Minister, and Mr. Rush, the American minister in London, Mr. Jefferson wrote that "our first and fundamental maxim should be never to entangle ourselves in the broils of Europe; our second, never to suffer Europe to meddle with cisatlantic affairs. America, North and South, has a set of interests distinct from those of Europe and peculiarly her own. She should, therefore, have a system of her own, separate and apart from that of Europe."

In his message of December 2, 1823, President Monroe declared that "we should consider any attempt on the part [of the allied powers] to extend their system to any part of this hemisphere as dangerous to our peace and safety"; and that "we could not view any interposition for the purpose of oppressing [governments on this side of the Atlantic whose independence we had acknowledged] or controlling in any manner their destinies by any European power, in any other light than as a manifestation of an unfriendly disposition toward the United States." The doctrine that has been developed on the basis of President Monroe's utterances has not become properly a part of international law; it, however, represents a part of the policy of the United States, and will probably not be interfered with if the Government of this country displays a proper determination to maintain it, and to refrain from interfering in the affairs of Europe.

Topics.—Origin of the Monroe Doctrine.—President Monroe's declaration.—Foreign policy of the United States.

206. National Territory.—In the modern conception of a nation, there is involved not merely the notion of government and people, but also the idea of territory. This territory must be strictly and carefully defined, since disputed boundaries lead almost universally to international friction, and sometimes to war. Territory is derived in various ways:

1. By occupying land which was before vacant, confirmed by prescriptive right.

2. By establishing colonies and drawing lands gradually under their dominion by the various means employed in colonial extension.

3. By conquest followed by prescriptive right.

4. By purchase or by gift.

The territory of a nation embraces:

1. The land within the boundaries as well as the interior seas, lakes, and rivers that lie wholly within these boundaries. Lake Michigan, for instance, is a part of the territory of the United States. Sometimes the national territory is composed of two or more distinct tracts, each within its separate boundary. These separate tracts may be either islands or parts of the continental area.

2. Mouths of rivers, bays, and estuaries.

3. The seacoast to a distance of one marine league, or three miles from the land.

Vessels belonging to the citizens and the public vessels of a given nation, on the high seas, have some of the attributes of national territory. Persons on the ship are subject to the laws of the nation to which they belong until the ship comes within the jurisdiction of another nation. But public vessels, warships, and all other vessels owned by the government and employed in its service, even if in a foreign port, are exempt from local jurisdiction.

Topics.—Need of definite boundaries for national territory.—Ways of acquiring territory.—What embraced in national territory.—Ships on the high seas.

207. The Question of the Mississippi.—During the war between France and England in the latter half of the eighteenth century, France transferred Louisiana to Spain. At the close of the War of Independence, therefore, the lower Mississippi ran through Spanish territory. The Mississippi valley was open to settlement from the Eastern States, and its population was increasing rapidly. Under these circumstances disputes naturally arose between the United States and Spain concerning the use of the stream for commerce. Then, by the treaty of San Lorenzo el Real, in 1795, citizens of the United States were granted the use of the river with the privilege of depositing and reshipping at New Orleans the goods brought down from the

northern settlements. In the negotiations between the two powers concerning this question, "the United States had contended that there is a natural right belonging to the inhabitants on the upper waters of a stream, under whatever political society they might be found, to descend by it to the ocean." But the argument by which it was sought to maintain this position was not conclusive, and even the advocates of the claim of the United States admitted that the right was an imperfect one.

By acquiring Louisiana and Florida, the United States came into possession of all the lands on both sides of the Mississippi from its source to its mouth; and no further question as to the control of the river arose. "Since then, the exclusive control of the river by the United States, so far as concerns foreign states, has been conceded internationally; though, subject to police supervision and to the right to impose pilotage and quarantine regulations, the free navigation of this and of other navigable rivers within the United States is, by the law of nations, accepted by the United States, open to all ships of foreign sovereigns."

A similar question arose with respect to the St. Lawrence, from the British point of view. This was settled by the treaty of June 5, 1854. By this treaty the St. Lawrence River and the canals in Canada were thrown open to navigation by citizens of the United States, who were accorded the same rights and privileges as the subjects of Great Britain.

The Stikine, Yukon, and Porcupine rivers rise in British territory and flow through Alaska to the sea. Questions respecting their navigation were settled by the treaty of Washington in 1871, when they were opened to the service of both nations.

Topics.—The Mississippi question.—Treaty of San Lorenzo, 1795.—Question with respect to the St. Lawrence and other rivers.

208. A Nation's Attitude Toward Aliens.—It is hardly necessary to discuss the question whether or not a nation may properly withdraw itself from intercourse with other nations, since this policy, almost everywhere, has ceased to be entertained. Nations that formerly saw only disadvantages in intercourse with foreigners find many advantages when once the barriers have been removed. A necessary incident to this intercourse is the recognition of an obligation to afford the alien due protection within the limits of the state's jurisdiction. The alien may claim protection and considerate treatment under the general duty of humanity which should always control the state's actions with reference to individual persons. This protection is due particularly: (1) To distressed foreigners, such as the survivors from shipwreck who have been cast upon the shore; (2) to persons innocently seeking a passage across the territory to some other land they wish to reach; (3) to persons traveling for pleasure or for the sake of gathering such information as in the opinion of the government may become public without detriment to the state.

Aliens admitted to this country are subject to its laws, unless by law they are granted exemption in certain particulars. This exemption is sometimes complete, amounting to what is known as *exterritoriality*. This applies especially: (1) To sovereigns traveling with their trains; (2) to ambassadors, their suite, family, and servants; (3) to the officers and crews of public armed vessels in port, and to armies in case they are permitted to pass over territory belonging to the nation.

Sometimes Christian states have demanded that their citizens or subjects shall be exempt from the local courts when residing in certain Oriental countries. In such cases they are often permitted to reside only in certain specified parts of the country, which have been defined by treaties. When a crime has been committed by a member of the nation

enjoying this privilege, the criminal is tried before a court established at the consulate of the nation to which he belongs.

Topics.—Protection due persons who are not citizens.—Position of aliens.—Exterritoriality.

209. **Extradition.**—In the successful administration of justice, much depends on the attitude which nations assume toward one another as to the extradition of criminals. If the criminal knows that the government of the country in which he has taken refuge will not surrender him to the pursuing officers, the moral force of the law he has violated will be greatly diminished. It is, of course, competent for any nation to take this position and hold that it is not under any obligation to administer the criminal laws of another country, or to aid in administering them. It is, however, interested in rejecting as many criminal immigrants as it may find within its borders. A serious difficulty in the matter arises from the different definitions of crime that obtain in different countries. One government may demand a prisoner for punishment for an action which the second nation does not consider a crime meriting the proposed penalty.

There appear to be two ways of dealing with this question: One is by requesting that, as a special favor, the government of the country in which the criminal has taken refuge deliver him up. This unregulated action may lead to the surrender of persons who ought not to be surrendered, such as political offenders. The other way is by forming treaties embracing international rules and descriptions of the crimes for which extradition shall be had, and by demanding the prisoners under the terms of the treaty with the nation in question.

Topics.—Extradition of criminals.—State's attitude toward criminal immigrants.—Different views of crime.—Treaties providing for extradition.

210. Reputation of Other States to be Regarded.—It is the duty of every state in communicating with other states to avoid all expressions that may be interpreted as insults, or may be considered as damaging to reputation. This applies to documents not intended to be sent out of the country, as well as to those addressed to governmental agents abroad and to foreign governments. The United States sent a secret agent to Hungary in 1850. The object of the mission was to determine whether it was probable that Hungary would gain her independence. The instructions were published; and the expression, "iron rule," used to characterize Austria's control over Hungary, moved the Austrian Government to request Mr. Hülseman, the Austrian *chargé d'affaires* in Washington, to make known its displeasure at the offensive language. In the correspondence which followed, the authorities of the United States affirmed that it was unavoidable that this nation should sympathize with a people struggling for independence, and "that a communication from the President to either house of Congress is regarded as a domestic communication, of which ordinarily no foreign state has cognizance." The conclusion drawn from the correspondence relating to this incident appears to be that a foreign nation may properly protest against expressions used in communications between the departments of a government; and, if injurious to its reputation, the foreign state may demand redress.

Topics.—Communication between states.—Concerning independence of Hungary.—Foreign criticism of domestic communications.

211. Treaties.—It has already been stated that treaties to which the United States is a party are made by the President with the coöperation of the Senate. These are the constituted agents of the nation for treaty-making. Before a treaty can be made with another power, the prop-

erly authorized agents for this purpose in the foreign government must be found. In the United States the power of the actual Government is limited by the Constitution; whence it follows that if a treaty is made by the President and the Senate, which violates the Constitution, it is in so far invalid; for the determinations of the President or the Senate acting outside of power granted by the Constitution have no more binding force than have the acts of any private citizens.

In case the authorities empowered to make a treaty treacherously sacrifice the interests of the nation, such a treaty can scarcely be regarded as the act of the nation, and in justice should not stand. There are, however, grave difficulties in the way of invalidating treaties that have been framed with strict observance of all the prescribed forms, even though it may be claimed that the makers of the treaty have acted without patriotism and been careless of the interests of the nation they professed to represent. If the signature of one party to a treaty is obtained by force or by the false representations of the other party, the treaty is not binding. If a treaty sacrifices the interests of the nation, its validity is not impaired if this result is due to lack of information or the stupidity of the nation's representative, and not to false statements made by the opposite party with the intention to deceive. The makers of a treaty cannot bind this nation to do an act prohibited by the Constitution.

Treaties are of various kinds. Commercial treaties define private relations. They fix certain terms under which private persons residing in different countries may trade with one another. Political treaties deal with sovereign states in their relation to other sovereign states. As regards their duration, some treaties are temporary and others are of unlimited duration. Among the various forms of treaties, treaties of alliance are conspicuous; and alliances

may be formed for a variety of purposes. Two nations may form an alliance for the purpose of carrying on a war against a common enemy. This is an offensive alliance. They may form an alliance for the purpose of defending themselves against foreign encroachments. An alliance of this kind is called an alliance for defense, or a defensive alliance.

Topics.—The making of treaties by the United States.—Powers of President and Senate as to treaties.—What treaties not binding.—Relation of Constitution to treaties.—Kinds of treaties.

212. The Settlement of International Disputes.—Since sovereign nations have no common superior to whom they can appeal for a settlement of their differences, they have adopted various means to secure a recognition of what they consider to be their rights. In the first place, they enter into correspondence with one another through their properly accredited agents, hoping that a reasonable presentation and comparison of their claims will enable them to unite on some common ground, and formulate and approve terms of agreement. In the second place, finding themselves unable to reach such an agreement, they conclude to refer the case to a third person who is authorized by them to consider the merits of both sides of the contention and pronounce a decision, the opposing parties having agreed to accept and abide by this decision. In the third place, not being able to reach an agreement by either of these means, they resort to force. The first means employed is diplomacy; the second is arbitration; the third is war.

Topics.—International controversies.—Methods of settlement: Diplomatic correspondence; arbitration; war.

213. Neutral Nations in Times of War. — Although nations may resort to war as a method of settling their disputes, no war is likely to involve all the nations of the

world at the same time. Under any probable circumstances, therefore, there will remain at all times many nations at peace with one another and with the states that are carrying on the war. These are the neutral nations. They are expected to maintain peaceful relations with both of the belligerents, as the nations at war are called, and to hold an impartial attitude toward them. They are expected, moreover, to abstain from assisting either party in the conflict, and to maintain the friendly relations that existed before the war began. A neutral state may not furnish either belligerent with articles of food or munitions of war or with anything that will in any manner aid him in his military operations. It may not permit its ports or territorial waters to be used as a base for military or naval undertakings; nor may it permit deposits of supplies within the limits of its territory. Furthermore, when a ship from a belligerent fleet takes refuge in a neutral port it is expected that it will leave within twenty-four hours or remain dismantled till the end of the war. The vessels of a neutral state may traverse the high seas undisturbed, except when carrying contraband of war—that is to say, except when carrying articles destined to the military use or assistance of a belligerent.

Fortunately, at present, the enlightened nations insist on the rigid observance of the rules of neutrality; and on the remarkable unanimity of opinion shown throughout the civilized world in 1905, that the war between Japan and Russia had continued long enough and should close, we may found the hope that the neutral nations will suffer war to last only to the attainment of essential justice, and that their combined moral influence in the future will be exerted to the maintenance of peace.

Topics.—Definition of neutral nation.—Duties of neutral nations.—Neutral ports and neutral vessels.—Moral force of neutrals.

APPENDIX

I

AN ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES, NORTHWEST OF THE RIVER OHIO.

JULY 13, 1787.

A single district, or two.

Be it ordained, by the United States, in Congress assembled, that the said Territory, for the purposes of temporary government, be one district; subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

Descent of property.

Be it ordained, by the authority aforesaid, that the estates, both of resident and non-resident proprietors in the said Territory, dying intestate, shall descend to, and be distributed among, their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grandchild, to take the share of their deceased parent, in equal parts, among them; and where there shall be no children or descendants, then in equal parts to the next of kin, in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate, shall have, in equal parts, among them, their deceased parent's share; and there shall in no case be a distinction between kindred of the whole and half blood; saving in all cases to the widow of the intestate, her third part of the real estate for life, and one-third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said Territory may be devised or bequeathed by wills in writing, signed and sealed by him or her, in whom the estate may be (being of full age), and attested by three witnesses, and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed, and delivered by the person, being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly

Widow to receive the third part.

May be bequeathed by will.

proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery, saving, however, to the French and Canadian inhabitants, and other settlers of the Kaskaskias, Saint Vincents, and the neighboring villages, who have heretofore professed themselves citizens of Virginia, their laws and customs now in force among them, relative to descent and conveyance of property.

Governor's term, three years. Must own 1,000 acres in the district.

Be it ordained, by the authority aforesaid, that there shall be appointed from time to time, by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein, in one thousand acres of land, while in the exercise of his office. There shall be appointed from time to time, by Congress, a secretary, whose commission shall continue in force for four years, unless sooner revoked; he shall reside in the district, and have a freehold estate therein, in five hundred acres of land, while in the exercise of his office; it shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department; and transmit authentic copies of such acts and proceedings, every six months, to the secretary of Congress. There shall also be appointed a court, to consist of three judges, any two of whom to form a court, who shall have a common-law jurisdiction, and reside in the district, and have each therein a freehold estate, in five hundred acres of land, while in the exercise of their offices; and their commissions shall continue in force during good behavior.

Governor and secretary appointed by Congress.

Three judges, each must own 500 acres.

Governor and judges may adopt laws from older States.

The governor and judges, or a majority of them, shall adopt and publish in the district, such laws of the original States, criminal and civil, as may be necessary, and best suited to the circumstances of the district, and report them to Congress, from time to time, which laws shall be in force in the district until the organization of the general assembly therein, unless disapproved of by Congress; but afterward, the legislature shall have authority to alter them as they shall think fit.

Governor, commander in chief of militia.

The governor, for the time being, shall be commander in chief of the militia, appoint and commission all officers in the same, below the rank of general officers. All general officers shall be appointed and commissioned by Congress.

Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers, in each county

or township, as he shall find necessary for the preservation of the peace and good order in the same. After the general assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the governor.

For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time, as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

Counties and townships to be laid out

So soon as there shall be five thousand free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly: *provided*, that for every five hundred free male inhabitants there shall be one representative, and so on progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to twenty-five, after which the number and proportion of representatives shall be regulated by the legislature; *provided*, that no person be eligible or qualified to act as a representative, unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years, and in either case shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; *provided, also*, that a freehold in fifty acres of land in the district, having been a citizen of one of the States, and being resident in the district, or the like freehold and two years' residence in the district, shall be necessary to qualify a man as an elector of a representative.

General assembly, when 5,000 inhabitants.

Qualifications of representatives.

The representatives thus elected, shall serve for the term of two years, and in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

Term, two years, in general assembly.

The general assembly, or legislature, shall consist of the governor, legislative council, and a house of representatives. The legislative council shall consist of five members, to continue in office for five

Legislative council, representatives, and governor.

years, unless sooner removed by Congress, any three of whom to be a quorum, and the members of the council shall be nominated and appointed in the following manner: to wit, as soon as representatives shall be elected, the governor shall appoint a time and place for them to meet together, and when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress, one of whom Congress shall appoint and commission for the residue of the term; and every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress, five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed.

Mode of appointing legislative council.

Law-making.

And the governor, legislative council, and house of representatives shall have authority to make laws in all cases for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill or legislative act whatever shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when in his opinion it shall be expedient.

Oaths of office.

The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity, and of office—the governor before the president of Congress, and all other officers before the governor. As soon as a legislature shall be formed in the district, the council and house, assembled in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress with a right of debating, but not of voting, during this temporary government.

Delegate in Congress.

Fundamental principles.

And for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions, are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said Territory; to provide also for the establishment of States; and permanent government

therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest.

It is hereby ordained and declared, by the authority aforesaid, that the following articles shall be considered as articles of compact between the original States and the people and States in the said Territory, and forever remain unalterable, unless by common consent, to wit:

Bill of Rights.

ARTICLE I.—No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments in the said Territory.

ART. II.—The inhabitants of the said Territory shall always be entitled to the benefit of the writ of *habeas corpus*, and of trial by jury; of a proportionate representation of the people in the legislature, and of judicial proceedings according to the course of the common law; all persons shall be bailable unless for capital offenses, where the proof shall be evident or the presumption great; all fines shall be moderate, and no cruel or unusual punishment shall be inflicted; no man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary for the common preservation to take any person's property, or to demand his particular services, full compensation shall be made for the same; and in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the said Territory, that shall in any manner whatever, interfere with, or affect private contracts or engagements, *bona fide* and without fraud previously formed.

Religion.

ART. III.—Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools, and the means of education shall forever be encouraged. The utmost good faith shall always be observed toward the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them.

Treatment of Indians.

Perpetually part of the Union.

ART. IV.—The said Territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alteration therein, as shall be constitutionally

made; and to all the acts and ordinances of the United States, in Congress assembled, conformable thereto. The inhabitants and settlers in the said Territory shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them, by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion, shall be laid and levied by the authority and direction of the legislatures of the district, or districts, or new States, as in the original States, within the time agreed upon by the United States, in Congress assembled. The legislatures of those districts, or new States, shall never interfere with the primary disposal of the soil by the United States, in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and in no case shall non-resident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and forever free, as well to the inhabitants of the said Territory, as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

Taxation.

Not less than three nor more than five States may be formed.

Boundaries.

ART. V.—There shall be formed in the said Territory not less than three, nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession and consent to the same, shall become fixed and established as follows, to wit: The western State in the said Territory shall be bounded by the Mississippi, the Ohio, and the Wabash rivers; a direct line drawn from the Wabash and Post St. Vincent's due north to the territorial line between the United States and Canada, and by the said territorial line to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post St. Vincent's to the Ohio, by the Ohio, by a direct line drawn due north from the mouth of the Great Miami to the said territorial line, and by said territorial line. The eastern State shall be bounded by the last-mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *provided*, however, and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that if Congress shall hereafter find it expedient they shall have authority to form one or two States in that part of the said Territory which lies north of an east and west line drawn

through the southerly bend or extreme of Lake Michigan. And whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted by its delegates, into the Congress of the United States, on an equal footing with the original States, in all respects whatsoever; and shall be at liberty to form a permanent constitution and State government: *provided*, the constitution and government so to be formed shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

ART. VI.—There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: *provided*, always, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

Slavery not permitted.

Fugitive slaves may be returned.

Be it ordained, by the authority aforesaid, that the resolutions of the 23d of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void.

II

ARTICLES OF CONFEDERATION

ARTICLES OF CONFEDERATION AND PERPETUAL UNION BETWEEN THE STATES OF NEW HAMPSHIRE, MASSACHUSETTS BAY, RHODE ISLAND AND PROVIDENCE PLANTATIONS, CONNECTICUT, NEW YORK, NEW JERSEY, PENNSYLVANIA, DELAWARE, MARYLAND, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, AND GEORGIA.

ARTICLE I.—The style of this Confederacy shall be "The United States of America."

Name.

ART. II.—Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right, which is not by this Confederation expressly delegated to the United States, in Congress assembled.

Each State to hold all power not expressly delegated.

League of friendship for general welfare.

ART. III.—The said States hereby severally enter into a firm league of friendship with each other for their common defense, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretense whatever.

ART. IV.—The better to secure and perpetuate mutual friendship and intercourse among the people of the different States of this Union, the free inhabitants of each of these States, paupers, vagabonds, and fugitives from justice excepted, shall be entitled to all privileges and immunities of free citizens in the several States;

Free interstate migration and commerce.

and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions, and restrictions as the inhabitants thereof respectively: *provided*, that such restrictions shall not extend so far as to prevent the removal of property imported into any State, to any other State of which the owner is an inhabitant: *provided also*, that no imposition, duties, or restriction shall be laid by any State on the property of the United States, or either of them.

Fleeing criminals to be given up by States.

If any person guilty of or charged with treason, felony, or other high misdemeanor in any State, shall flee from justice, and be found in any of the United States, he shall, upon demand of the governor or executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of his offense.

Full faith and credit to records.

Full faith and credit shall be given in each of these States to the records, acts, and judicial proceedings of the courts and magistrates of every other State.

Delegates to Congress.

ART. V.—For the more convenient management of the general interests of the United States, delegates shall be annually appointed, in such manner as the Legislature of each State shall direct, to meet in Congress, on the first Monday in November in every year, with a power reserved to each State to recall its delegates, or any of them, at any time within the year, and to send others in their stead for the remainder of the year.

No State shall be represented in Congress by less than two, nor by more than seven members; and no person shall be capable of being a delegate for more than three years in any term of six years; nor shall any person, being a delegate, be capable of holding any office under the United States, for which he, or another for his benefit, receives any salary, fees, or emolument of any kind.

Each State shall maintain its own delegates in a meeting of the States, and while they act as members of the committee of the States.

Each State to maintain its delegates.

In determining questions in the United States, in Congress assembled, each State shall have one vote.

Each State one vote.

Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress; and the members of Congress shall be protected in their persons from arrests and imprisonments during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace.

Freedom of speech.

ART. VI.—No State, without the consent of the United States, in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance, or treaty with any king, prince, or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility.

No embassy without consent of Congress.

No two or more States shall enter into any treaty, confederation, or alliance whatever between them, without the consent of the United States, in Congress assembled, specifying accurately the purposes for which the same is to be entered into, and how long it shall continue.

No alliances among States without consent of Congress.

No State shall lay any imposts or duties, which may interfere with any stipulations in treaties entered into by the United States in Congress assembled, with any king, prince, or state, in pursuance of any treaties already proposed by Congress to the courts of France and Spain.

No imposts or duties.

No vessels of war shall be kept up in time of peace by any State, except such number only as shall be deemed necessary by the United States, in Congress assembled, for the defense of such State, or its trade; nor shall any body of forces be kept up by any State, in time of peace, except such number only, as in the judgment of the United States, in Congress assembled, shall be deemed requisite to garrison the forts necessary for the defense of such State; but every State shall always keep up a well-regulated and disciplined militia, sufficiently armed and accoutered, and shall provide and have constantly ready for use, in public stores, a due number of field pieces and tents, and a proper quantity of arms, ammunition, and camp equipage.

No military or naval force in peace, except adequate garrisons.

No State to engage in war.

No State shall engage in any war without the consent of the United States, in Congress assembled, unless such State be actually invaded by enemies, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of a delay till the United States, in Congress assembled, can be consulted. Nor shall any State grant commissions to any ships or vessels of war, nor letters of marque or reprisal, except it be after a declaration of war by the United States, in Congress assembled, and then only against the kingdom or state, and the subjects thereof, against which war has been so declared; and under such regulations as shall be established by the United States, in Congress assembled; unless such State be infested by pirates, in which case vessels of war may be fitted out for that occasion, and kept so long as the danger shall continue, or until the United States, in Congress assembled, shall determine otherwise.

Officers of State forces appointed by legislature.

ART. VII.—When land forces are raised by any State for the common defense, all officers of or under the rank of colonel shall be appointed by the Legislature of each State, respectively, by whom such forces shall be raised, or in such manner as such State shall direct, and all vacancies shall be filled up by the State which first made the appointment.

Common treasury supplied by States.

ART. VIII.—All charges of war, and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States, in Congress assembled, shall be defrayed out of the common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person, as such land and the buildings and improvements thereon shall be estimated according to such mode as the United States, in Congress assembled, shall, from time to time, direct and appoint. The taxes for paying that proportion shall be laid and levied by the authority and direction of the Legislatures of the several States, within the time agreed upon by the United States, in Congress assembled.

Congress determines on war and peace.

ART. IX.—The United States, in Congress assembled, shall have the sole and exclusive right and power of determining on peace and war, except in the cases mentioned in the sixth article; of sending and receiving ambassadors; entering into treaties and alliances: *provided*, that no treaty of commerce shall be made whereby the legislative power of the respective States shall be restrained from imposing such imposts and duties on foreigners, as their own people are subjected to, or from prohibiting the expor-

No treaty restricting certain liberties of States.

tation or importation of any species of goods or commodities whatsoever; of establishing rules for deciding, in all cases, what captures on land or water shall be legal, and in what manner prizes taken by land or naval forces in the service of the United States shall be divided or appropriated; of granting letters of marque and reprisal in times of peace; appointing courts for the trial of piracies and felonies committed on the high seas, and establishing courts for receiving and determining finally appeals in all cases of captures: *provided*, that no member of Congress shall be appointed a judge of any of the said courts.

Differences between States appealed to Congress.

The United States, in Congress assembled, shall also be the last resort on appeal in all disputes and differences now subsisting, or that hereafter may arise, between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: Whenever the legislative or executive authority, or lawful agent of any State in controversy with another, shall present a petition to Congress, stating the matter in question, and praying for a hearing, notice thereof shall be given, by order of Congress, to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen; and from that number not less than seven, nor more than nine names, as Congress shall direct, shall, in the presence of Congress, be drawn out by lot, and the persons whose names shall be so drawn, or any five of them, shall be commissioners or judges to hear and finally determine the controversy, so always as a major part of the judges who shall hear the cause shall agree in the determination; and if either party shall neglect to attend at the day appointed, without showing reasons, which Congress shall judge sufficient, or being present shall refuse to strike, the Congress shall proceed to nominate three persons out of each State, and the Secretary of Congress shall strike in behalf of such party absent or refusing; and the judgment and sentence of the court to be appointed, in the manner before prescribed, shall be final and conclusive; and if any of the parties shall refuse to submit to the authority of such court, or to appear or defend their claim or cause, the court shall, neverthe-

Procedure.

less, proceed to pronounce sentence or judgment, which shall in like manner be final and decisive, the judgment or sentence and other proceedings being in either case transmitted to Congress, and lodged among the acts of Congress for the security of the parties concerned: *provided*, that every commissioner, before he sits in judgment, shall take an oath, to be administered by one of the Judges of the Supreme or Superior Court of the State where the cause shall be tried, "well and truly to hear and determine the matter in question, according to the best of his judgment, without favor, affection, or hope of reward": *provided, also*, that no State shall be deprived of territory for the benefit of the United States.

Congress hears land-grant disputes.

All controversies concerning the private right of soil claimed under different grants of two or more States, whose jurisdictions as they may respect such lands, and the States which passed such grants, are adjusted, the said grants, or either of them, being at the same time claimed to have originated antecedent to such settlement of jurisdiction, shall, on the petition of either party to the Congress of the United States, be finally determined as near as may be in the same manner as is before described for deciding disputes respecting territorial jurisdiction between different States.

Coinage; weights and measures; trade with Indians.

The United States, in Congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck by their own authority, or by that of the respective States; fixing the standard of weights and measures throughout the United States; regulating the trade, and managing all affairs with the Indians, not members of any of the States: *provided*, that the legislative right of any State, within its own limits, be not infringed or violated; establishing and regulating post offices from one State to another, throughout all the United States, and exacting such postage on the papers passing through the same as may be requisite to defray the expenses of the said office; appointing all officers of the land forces in the service of the United States, excepting regimental officers; appointing all the officers of the naval forces, and commissioning all officers whatever in the service of the United States; making rules for the government and regulation of the said land and naval forces, and directing their operations.

Post offices.

Appointment of military and naval officers.

Committee of the States.

The United States, in Congress assembled, shall have authority to appoint a committee, to sit in the recess of Congress, to be denominated a "Committee of the States," and to consist of one delegate from each State; and to appoint such other committees and civil officers as may be necessary for managing the general affairs of the United States under their direction; to appoint one

of their number to preside: *provided*, that no person be allowed to serve in the office of President more than one year in any term of three years; to ascertain the necessary sums of money to be raised for the service of the United States, and to appropriate and apply the same for defraying the public expenses; to borrow money or emit bills on the credit of the United States, transmitting every half year to the respective States an account of the sums of money so borrowed or emitted; to build and equip a navy; to agree upon the number of land forces, and to make requisitions from each State for its quota, in proportion to the number of white inhabitants in such State, which requisition shall be binding, and thereupon the Legislature of each State shall appoint the regimental officers, raise the men, and clothe, arm, and equip them in a soldier-like manner, at the expense of the United States; and the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled. But if the United States, in Congress assembled, shall, on consideration of circumstances, judge proper that any State should not raise men, or should raise a smaller number than its quota, and that any other State should raise a greater number of men than the quota thereof, such extra number shall be raised, officered, clothed, armed, and equipped in the same manner as the quota of such State, unless the Legislature of such State shall judge that such extra number cannot be safely spared out of the same, in which case they shall raise, officer, clothe, arm, and equip as many of such extra number as they judge can be safely spared. And the officers and men so clothed, armed, and equipped shall march to the place appointed, and within the time agreed on by the United States, in Congress assembled.

President of Congress.

Borrowing money.

Navy and land forces.

The United States, in Congress assembled, shall never engage in a war, nor grant letters of marque and reprisal in time of peace, nor enter into any treaties or alliances, nor coin money, nor regulate the value thereof, nor ascertain the sums and expenses necessary for the defense and welfare of the United States, or any of them, nor emit bills, nor borrow money on the credit of the United States, nor appropriate money, nor agree upon the number of vessels of war to be built or purchased, or the number of land or sea forces to be raised, nor appoint a commander in chief of the army or navy, unless nine States assent to the same; nor shall a question on any other point, except for adjourning from day to day, be determined, unless by the votes of a majority of the United States, in Congress assembled.

Assent of nine States required on important measures.

Adjournment.

Journal.

The Congress of the United States shall have power to adjourn to any time within the year, and to any place within the United States, so that no period of adjournment be for a longer duration than the space of six months; and shall publish the *Journal* of their proceedings monthly, except such parts thereof relating to treaties, alliances, or military operations, as in their judgment require secrecy; and the yeas and nays of the delegates of each State on any question shall be entered on the *Journal*, when it is desired by any delegate; and the delegates of a State, or any of them, at his or their request, shall be furnished with a transcript of the said *Journal*, except such parts as are above excepted, to lay before the legislatures of the several States.

Powers of Committee of the States.

ART. X.—The Committee of the States, or any nine of them, shall be authorized to execute, in the recess of Congress, such of the powers of Congress as the United States, in Congress assembled, by the consent of nine States, shall, from time to time, think expedient to vest them with: *provided*, that no power be delegated to the said committee, for the exercise of which, by the Articles of Confederation, the voice of nine States in the Congress of the United States assembled is requisite.

Canada might join.

ART. XI.—Canada acceding to this Confederation, and joining in the measures of the United States, shall be admitted into, and entitled to all the advantages of this Union; but no other colony shall be admitted into the same, unless such admission be agreed to by nine States.

Public credit.

ART. XII.—All bills of credit emitted, moneys borrowed and debts contracted, by or under the authority of Congress, before the assembling of the United States, in pursuance of the present Confederation, shall be deemed and considered as a charge against the United States, for payment and satisfaction whereof the said United States and the public faith are hereby solemnly pledged.

States to abide by determinations by Congress.

ART. XIII.—Every State shall abide by the determinations of the United States, in Congress assembled, on all questions which by this Confederation are submitted to them. And the Articles of this Confederation shall be inviolably observed by every State, and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a Congress of the United States, and be afterward confirmed by the Legislatures of every State.

AND WHEREAS, It hath pleased the Great Governor of the world to incline the hearts of the Legislatures we respectively represent in Congress, to approve of, and to authorize us to ratify the said

Articles of Confederation and perpetual Union. Know ye that we, the undersigned delegates, by virtue of the power and authority to us given for that purpose, do by these presents, in the name and in behalf of our respective constituents, fully and entirely ratify and confirm each and every of the said Articles of Confederation and perpetual Union, and all and singular the matters and things therein contained.

And we do further solemnly plight and engage the faith of our respective constituents, that they shall abide by the determinations of the United States, in Congress assembled, on all questions which by the said Confederation are submitted to them; and that the articles thereof shall be inviolably observed by the States we respectively represent, and that the Union shall be perpetual.

In witness whereof, we have hereunto set our hands in Congress. Done at Philadelphia, in the State of Pennsylvania, the 9th day of July, in the year of our Lord, 1778, and in the 3d year of the Independence of America.

III

CONSTITUTION OF THE UNITED STATES OF AMERICA

Preamble.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I.

Legislative powers.

SECTION 1.—All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

House of Representatives.

SEC. 2.—1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

Eligibility of representatives.

2. No person shall be a Representative who shall not have attained the age of twenty-five years and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Manner and ratio of representation and taxation.

3. [Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.]

This clause has been superseded, so far as it relates to representation, by Section 2 of the Fourteenth Amendment to the Constitution.

Vacancies in representation.

4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

Speaker and impeachment.

5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

The Senate.

SEC. 3.—1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years, and each Senator shall have one vote.

Choice of one-third of senators every second year.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

Eligibility of senators.

3. No person shall be a Senator who shall not have attained the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of the State for which he shall be chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no voice unless they shall be equally divided. **President of the Senate.**

5. The Senate shall choose their officers, and have a President *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States. **President pro tem.**

6. The Senate shall have the sole power to try all impeachments; when sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present. **Senate's power to try impeachments.**

7. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law. **Penalty in cases of impeachment.**

SEC. 4.—1. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators. **Congressional elections.**

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day. **Meeting of Congress.**

SEC. 5.—1. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide. **Organization of Congress.**

2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member. **Rules of proceedings. Punishment of members.**

3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may, in their judgment, require secrecy; and the ayes and noes of the members of either house, on any question, shall, at the desire of one-fifth of those present, be entered on the journal. **Journal of proceedings.**

4. Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting. **Adjournment.**

Compensation and privileges of congressmen.

SEC. 6.—1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

Congressmen not to hold civil office.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

[*See also Section 3 of the Fourteenth Amendment.*]

Revenue bills.

SEC. 7.—1. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills.

Bills, etc., to be presented to the President of the United States.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by ayes and noes; and the names of the persons voting for and against the bill shall be entered on the journal of each house, respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and the House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and, before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Repre-

sentatives, according to the rules and limitations prescribed in the case of a bill.

SEC. 8.—1. The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States. **Powers of Congress.**

2. To borrow money on the credit of the United States. **Loans.**

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes. **Commerce.**

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States. **Naturalization.**

5. To coin money, regulate the value thereof and of foreign coins, and fix the standard of weights and measures. **Coin.**

6. To provide for the punishment of counterfeiting the securities and current coin of the United States. **Counterfeiting.**

7. To establish post offices and post roads. **Post office.**

8. To promote the progress of science and useful arts by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries. **Patents and copyrights.**

9. To constitute tribunals inferior to the Supreme Court. **Courts.**

10. To define and punish piracies and felonies committed on the high seas, and offenses against the laws of nations. **Piracies.**

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water. **War.**

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

13. To provide and maintain a navy. **Navy.**

14. To make rules for the government and regulation of the land and naval forces. **Military and naval rules.**

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions. **Militia.**

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States, respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress.

17. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the **Federal district and other places.**

State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.

Implied powers.

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

[*For other powers, see Article II, Section 1; Article III, Sections 2 and 3; Article IV, Sections 1–3; and Article V.*]

Tax on importation of slaves.

SEC. 9.—1. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

Writ of habeas corpus.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Ex post facto law.

3. No bill of attainder or *ex post facto* law shall be passed.

Direct taxes.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

Free trade among the States.

5. No tax or duty shall be laid on articles exported from any State.

No commercial discrimination between States.

6. No preference shall be given, by any regulation of commerce or revenue, to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.

Drawing money from treasury.

7. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Titles of nobility interdicted.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State.

Powers denied to the States.

SEC. 10.—1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No State shall, without the consent of the Congress, lay any

impost or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as will not admit of delay.

ARTICLE II.

The Executive power.

SECTION 1.—1. The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President chosen for the same term, be elected as follows:

Election of President and Vice-President.

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an Elector.

3. [The Electors shall meet in their respective States and vote, by ballot, for two persons, of whom one at least shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list, the said house shall, in like manner, choose the President. But in choosing the President the vote shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States,

and a majority of all the States shall be necessary to a choice. In every case after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.]

This clause has been superseded by the Twelfth Amendment to the Constitution.

Time of choosing electors and casting electoral vote.

4. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

Requirements for office of President.

5. No person except a natural-born citizen or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained the age of thirty-five years, and been fourteen years a resident within the United States.

[*See also Article II, Section 1, and Fourteenth Amendment.*]

Proviso in case of death, etc., of the President.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

Compensation of President.

7 The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States or any of them.

President's oath of office.

8. Before he enters on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

NOTE.—Agreeably with the powers conferred by Clause 6, Section 1, Article II, of the Constitution, Congress in 1886 provided for the succession to the Presidency in case of the removal, death, resignation, or inability of the President or Vice-President by directing that the office devolve first upon the Secretary of State, and in case of his inability, for any reason, to perform its duties, it should pass, successively, upon similar conditions, to the Secretary of the Treasury, Secretary of War, Attorney-General, Postmaster-General, Secretary of the Navy, and Secretary of the Interior. If, however, any one of these officers should be of foreign birth, the Presidency passes to the next named in the list.

SEC. 2.—1. The President shall be commander in chief of the Army and Navy of the United States, and of the militia of the several States when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. **Powers and duties of the President.**

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, Judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may, by law, vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments. **Treaties and appointments.**

3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session. **Filling vacancies.**

SEC. 3.—He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and, in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

[*See also Article I, Section 5.*]

SEC. 4.—The President, Vice-President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. **Removal from office of President.**

[*See also Article I, Sections 2 and 3.*]

ARTICLE III.

SECTION 1.—The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior courts, shall hold their offices **Judicial power of the United States.**

during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

[*See also Eleventh Amendment.*]

Extent of judicial power of the United States.

SEC. 2.—1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States; and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

Rules of court procedure.

2. In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

Jury.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be put at such place or places as the Congress may, by law, have directed.

[*See also Fifth, Sixth, Seventh, and Eighth Amendments.*]

Treason: how defined and punished.

SEC. 3.—1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

2. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court.

3. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

State acts and records.

SECTION 1.—Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the man-

ner in which such acts, records, and proceedings shall be proved, and the effect thereof.

[*See also Fourteenth Amendment.*]

Privileges of citizens.

SEC. 2.—1. The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States.

Fugitives from justice.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Fugitive slaves.

3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Admission of new States.

SEC. 3.—1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of Congress.

Territories.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Republican government guaranteed.

SEC. 4.—The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on application of the Legislature or of the Executive (when the Legislature cannot be convened), against domestic violence.

ARTICLE V.

How amendments to the Constitution shall be made.

SECTION 1.—The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; *provided*, that no amendment which may be made

prior to the year one thousand eight hundred and eight shall, in any manner, affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

Debts.

SECTION 1.—1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the Confederation.

[*See also Fourteenth Amendment, Section 4.*]

The Constitution the supreme law.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Support of the Constitution required in official oath.

3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

Ratification.

SECTION 1.—The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

DONE in convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON.
President, and Deputy from Virginia.

NEW HAMPSHIRE.
JOHN LANGDON,
NICHOLAS GILMAN.

MASSACHUSETTS.
NATHANIEL GORHAM,
RUFUS KING.

CONNECTICUT.
WILLIAM SAMUEL JOHNSON,
ROGER SHERMAN.

NEW YORK.
ALEXANDER HAMILTON.

NEW JERSEY.
WILLIAM LIVINGSTON,
DAVID BREARLY,
WILLIAM PATTERSON,
JONATHAN DAYTON.

PENNSYLVANIA.
BENJAMIN FRANKLIN,
THOMAS MIFFLIN,
ROBERT MORRIS,
GEORGE CLYMER,
THOMAS FITZSIMONS,
JARED INGERSOLL,
JAMES WILSON,
GOUVERNEUR MORRIS.

DELAWARE.
GEORGE READ,
GUNNING BEDFORD, JR.,
JOHN DICKINSON,
RICHARD BASSETT,
JACOB BROOM.

MARYLAND.
JAMES McHENRY,
DANIEL OF ST. TH. JENIFER,
DANIEL CARROLL.

VIRGINIA.
JOHN BLAIR,
JAMES MADISON, JR.

NORTH CAROLINA.
WILLIAM BLOUNT,
RICHARD DOBBS SPAIGHT,
HUGH WILLIAMSON.

SOUTH CAROLINA.
JOHN RUTLEDGE,
CHARLES C. PINCKNEY,
CHARLES PINCKNEY,
PIERCE BUTLER.

GEORGIA.
WILLIAM FEW,
ABRAHAM BALDWIN.

Attest:

WILLIAM JACKSON,
Secretary.

AMENDMENTS

ARTICLE I.

[*The first ten Articles were proposed September 25, 1789, and ratified December 15, 1791.*]

Religious toleration. Freedom of speech and of press.

SECTION 1.—Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

ARTICLE II

Right to bear arms.

SECTION 1.—A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

Billeting of soldiers.

SECTION 1.—No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

Seizure, warrants, and seizures.

SECTION 1.—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon reasonable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

ARTICLE V.

Conditions of trial for capital crime.

SECTION 1.—No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

Mode of trial.

Judicial safeguards.

SECTION 1.—In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.

Trial by jury.

SECTION 1.—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by jury, shall be otherwise reexamined in any court of the United States than according to the rules of common law.

ARTICLE VIII.

Bails, fines, punishments.

SECTION 1.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

Constitutional and State rights.

SECTION 1.—The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

Powers reserved to States.

SECTION 1.—The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people.

ARTICLE XI.

Limitation of judicial power.

SECTION 1.—The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by the citizens of another State, or by citizens or subjects of any foreign State.—[*Proposed March 5, 1794; ratified January 8, 1798.*]

ARTICLE XII.

Election of President and Vice-President.

SECTION 1.—The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for President shall be the President, if such a number be a majority of the whole number of Electors appointed; and if no person have such a majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the

President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.—[*Proposed December 12, 1803; ratified September 25, 1804.*]

ARTICLE XIII.

Abolition of slavery.

SECTION 1.—Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SEC. 2.—Congress shall have power to enforce this article by appropriate legislation.—[*Declared ratified December 18, 1865.*]

ARTICLE XIV.

Privileges of citizenship protected.

SECTION 1.—All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Apportionment of Representatives.

SEC. 2.—Representatives shall be apportioned among the several States, according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors

for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Concerning those who rebel against the United States.

SEC. 3.—No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

Validity of the public debt.

SEC. 4.—The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SEC. 5.—The Congress shall have power to enforce, by appropriate legislation. the provisions of this article.—[*Declared ratified July 28, 1868.*]

ARTICLE XV.

Rights of citizens not to be abridged.

SECTION 1.—The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

SEC. 2.—The Congress shall have power to enforce this article by appropriate legislation.—[*Declared ratified, March 30, 1870.*]

IV

THE PRESIDENT'S INSTRUCTIONS TO THE BOARD OF COMMISSIONERS TO THE PHILIPPINE ISLANDS.

WAR DEPARTMENT,
WASHINGTON, April 7, 1900.

SIR: I transmit to you herewith the instructions of the President for the guidance of yourself and your associates as commissioners to the Philippine Islands.

Very respectfully, ELIHU ROOT,
Secretary of War.

Hon. WILLIAM H. TAFT,
President Board of Commissioners
to the Philippine Islands.

—

EXECUTIVE MANSION, April 7, 1900.

SIR: In the message transmitted to the Congress on the 5th of December, 1899, I said, speaking of the Philippine Islands: "As long as the insurrection continues the military arm must necessarily be supreme. But there is no reason why steps should not be taken from time to time to inaugurate governments, essentially popular in their form, as fast as territory is held and controlled by our troops. To this end I am considering the advisability of the return of the commission, or such of the members thereof as can be secured, to aid the existing authorities and facilitate this work throughout the islands."

Members of commission.

To give effect to the intention thus expressed, I have appointed Hon. William H. Taft, of Ohio; Prof. Dean C. Worcester, of Michigan; Hon. Luke E. Wright, of Tennessee; Hon. Henry C. Ide, of Vermont, and Prof. Bernard Moses, of California, commissioners to the Philippine Islands, to continue and perfect the work of organizing and establishing civil government already commenced by the military authorities, subject in all respects to any laws which Congress may hereafter enact.

The commissioners named will meet and act as a board, and the Hon. William H. Taft is designated as president of the board. It is probable that the transfer of authority from military command-

ers to civil officers will be gradual and will occupy a considerable period. Its successful accomplishment and the maintenance of peace and order in the meantime will require the most perfect co-operation between the civil and military authorities in the islands, and both should be directed during the transition period by the same executive department. The commission will therefore report to the Secretary of War, and all their actions will be subject to your approval and control.

To report to Secretary of War.

You will instruct the commission to proceed to the city of Manila, where they will make their principal office, and to communicate with the Military Governor of the Philippine Islands, whom you will at the same time direct to render to them every assistance within his power in the performance of their duties. Without hampering them by too specific instructions, they should in general be enjoined, after making themselves familiar with the conditions and needs of the country, to devote their attention in the first instance to the establishment of municipal governments in which the natives of the islands, both in the cities and in the rural communities, shall be afforded the opportunity to manage their own local affairs to the fullest extent of which they are capable, and subject to the least degree of supervision and control which a careful study of their capacities and observation of the workings of native control show to be consistent with the maintenance of law, order, and loyalty. The next subject in order of importance should be the organization of government in the larger administrative divisions, corresponding to counties, departments, or provinces, in which the common interests of many or several municipalities, falling within the same tribal lines or the same natural geographical limits, may best be subserved by a common administration. Whenever the commission is of the opinion that the condition of affairs in the islands is such that the central administration may safely be transferred from military to civil control, they will report that conclusion to you, with their recommendations as to the form of central government to be established for the purpose of taking over the control.

Municipal governments to be organized first.

Then provincial governments.

Beginning with the first day of September, 1900, the authority to exercise, subject to my approval, through the Secretary of War, that part of the power of government in the Philippine Islands which is of a legislative nature is to be transferred from the military governor of the islands to this commission, to be thereafter exercised by them in the place and stead of the military governor, under such rules and regulations as you shall prescribe, until the establishment of the civil central government for the islands contemplated in the

Beginning of commission's legislative power.

last foregoing paragraph, or until Congress shall otherwise provide. Exercise of this legislative authority will include the making of rules and orders, having the effect of law, for the raising of revenue by taxes, customs duties, and imposts; the appropriation and expenditure of public funds of the islands; the establishment of an educational system throughout the islands; the establishment of a system to secure an efficient civil service; the organization and establishment of courts; the organization and establishment of municipal and departmental governments, and all other matters of a civil nature for which the military governor is now competent to provide by rules or orders of a legislative character.

Scope of power.

The commission will also have power, during the same period, to appoint to office such officers under the judicial, educational, and civil-service systems, and in the municipal and departmental governments, as shall be provided for. Until the complete transfer of control the military governor will remain the chief executive head of the government of the islands, and will exercise the executive authority now possessed by him and not herein expressly assigned to the commission, subject, however, to the rules and orders enacted by the commission in the exercise of the legislative powers conferred upon them. In the meantime the municipal and departmental governments will continue to report to the military governor, and be subject to his administrative supervision and control, under your direction; but that supervision and control will be confined within the narrowest limits consistent with the requirements that the powers of government in the municipalities and departments shall be honestly and effectively exercised and that law and order and individual freedom shall be maintained.

Military governor to remain temporarily chief executive.

All legislative rules and orders, establishments of government, and appointments to office by the commission will take effect immediately, or at such times as they shall designate, subject to your approval and action upon the coming in of the commission's reports, which are to be made from time to time as their action is taken. Wherever civil governments are constituted under the direction of the commission, such military posts, garrisons, and forces will be continued for the suppression of insurrection and brigandage, and the maintenance of law and order, as the military commander shall deem requisite, and the military forces shall be at all times subject under his orders to the call of the civil authorities for the maintenance of law and order and the enforcement of their authority. In the establishment of municipal governments the commission will take as the basis of their work the governments established by

Military posts continued.

the military governor under his order of August 8, 1899, and under the report of the board constituted by the military governor by his order of January 29, 1900, to formulate and report a plan of municipal government, of which his honor Cayetano Arellano, president of the Audiencia, was chairman, and they will give to the conclusions of that board the weight and consideration which the high character and distinguished abilities of its members justify. In the constitution of department or provincial governments they will give especial attention to the existing government of the Island of Negros, constituted with the approval of the people of that island, under the order of the military governor of July 22, 1899, and after verifying, so far as may be practicable, the reports of the successful working of that government, they will be guided by the experience thus acquired, so far as it may be applicable to the condition existing in other portions of the Philippines. They will avail themselves, to the fullest degree practicable, of the conclusions reached by the previous commission to the Philippines.

Government of Negros.

In the distribution of powers among the governments organized by the commission, the presumption is always to be in favor of the smaller subdivision, so that all the powers which can properly be exercised by the municipal government shall be vested in that government, and all the powers of a more general character which can be exercised by the departmental government shall be vested in that government, and so that in the governmental system, which is the result of the process, the central government of the islands, following the example of the distribution of the powers between the States and the national Government of the United States, shall have no direct administration except of matters of purely general concern, and shall have only such supervision and control over local governments as may be necessary to secure and enforce faithful and efficient administration by local officers.

Presumption of power in favor of smaller politieal unit.

The many different degrees of civilization and varieties of custom and capacity among the people of the different islands preclude very definite instruction as to the part which the people shall take in the selection of their own officers; but these general rules are to be observed: That in all cases the municipal officers who administer the local affairs of the people are to be selected by the people, and that wherever officers of more extended jurisdiction are to be selected, in any way, natives of the islands are to be preferred, and, if they can be found competent and willing to perform the duties, they are to receive the offices in preference to any others. It will be necessary to fill some offices for the present with Americans which after a time

Natives to be preferred for offices.

Merit system for civil service to be enforced.

may well be filled by natives of the islands. As soon as practicable a system for ascertaining the merit and fitness of candidates for civil office should be put in force. An indispensable qualification for all offices and positions of trust and authority in the islands must be absolute and unconditional loyalty to the United States, and absolute and unhampered authority and power to remove and punish any officer deviating from that standard must at all times be retained in the hands of the central authority of the islands.

Well-being of Filipinos aim of government.

In all the forms of government and administrative provisions which they are authorized to prescribe, the commission should bear in mind that the government which they are establishing is designed not for our satisfaction, or for the expression of our theoretical views, but for the happiness, peace, and prosperity of the people of the Philippine Islands; and the measures adopted should be made to conform to their customs, their habits, and even their prejudices, to the fullest extent consistent with the accomplishment of the indispensable requisites of just and effective government. At the same time the commission should bear in mind, and the people of the islands should be made plainly to understand, that there are certain great principles of government which have been made the basis of our governmental system, which we deem essential to the rule of law and the maintenance of individual freedom, and of which they have, unfortunately, been denied the experience possessed by us; that there are also certain practical rules of government which we have found to be essential to the preservation of these great principles of liberty and law; and that these principles and these rules of government must be established and maintained in their islands for the sake of their liberty and happiness, however much they may conflict with the customs or laws or procedure with which they are familiar. It is evident that the most enlightened thought of the Philippine Islands fully appreciates the importance of these principles and rules, and they will inevitably within a short time command universal assent. Upon every division and branch of the government of the Philippines, therefore, must be imposed these inviolable rules:

American principles to be maintained.

Bill of rights.

That no person shall be deprived of life, liberty, or property without due process of law; that private property shall not be taken for public use without just compensation; that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance

of counsel for his defense; that excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted; that no person shall be put twice in jeopardy for the same offense, or be compelled in any criminal case to be a witness against himself; that the right to be secure against unreasonable searches and seizures shall not be violated; that neither slavery nor involuntary servitude shall exist except as a punishment for crime; that no bill of attainder, or *ex post facto* law shall be passed; that no law shall be passed abridging the freedom of speech or of the press, or of the rights of the people to peaceably assemble and petition the Government for a redress of grievances; that no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed.

Land titles of religious orders to be investigated and wrongs redressed.

It will be the duty of the commission to make a thorough investigation into the titles to the large tracts of land held or claimed by individuals or by religious orders; into the justice of the claims and complaints made against such landholders by the people of the islands, or any part of the people, and to seek by wise and peaceable measures a just settlement of the controversies and redress of the wrongs which have caused strife and bloodshed in the past. In the performance of this duty the commission is enjoined to see that no injustice is done; to have regard for substantial right and equity, disregarding technicalities so far as substantial right permits, and to observe the following rules: That the provision of the Treaty of Paris, pledging the United States to the protection of all rights of property in the islands, and as well the principle of our own Government, which prohibits the taking of private property without due process of law, shall not be violated; that the welfare of the people of the islands, which should be a paramount consideration, shall be attained consistently with this rule of property right; that if it becomes necessary for the public interest of the people of the islands to dispose of claims to property which the commission finds to be not lawfully acquired and held, disposition shall be made thereof by due legal procedure, in which there shall be full opportunity for fair and impartial hearing and judgment; that if the same public interests require the extinguishment of property rights lawfully acquired and held, due compensation shall be made out of the public treasury therefor; that no form of religion and no minister of religion shall be forced upon any community or upon any citizen of the islands; that upon the other hand no minister of religion shall be

Rights of property to be maintained.

Separation of state and church.

interfered with or molested in following his calling, and that the separation between state and church shall be real, entire, and absolute.

Free primary education.

It will be the duty of the commission to promote and extend, and, as they find occasion, to improve, the system of education already inaugurated by the military authorities. In doing this they should regard as of first importance the extension of a system of primary education which shall be free to all, and which shall tend to fit the people for the duties of citizenship and for the ordinary avocations of a civilized community. This instruction should be given, in the first instance, in every part of the islands in the language of the people. In view of the great number of languages spoken by the different tribes, it is especially important to the prosperity of the islands that a common medium of communication may be established, and it is obviously desirable that this medium should be the English language. Especial attention should be at once given to affording full opportunity to all the people of the islands to acquire the use of the English language.

English language to be taught.

Taxation.

It may be well that the main changes which should be made in the system of taxation and in the body of the laws under which the people are governed, except such changes as have already been made by the military government, should be relegated to the civil government which is to be established under the auspices of the commission. It will, however, be the duty of the commission to inquire diligently as to whether there are any further changes which ought not to be delayed; and if so, they are authorized to make such changes, subject to your approval. In doing so they are to bear in mind that taxes which tend to penalize or repress industry and enterprise are to be avoided; that provisions for taxation should be simple, so that they may be understood by the people; that they should affect the fewest practicable subjects of taxation which will serve for the general distribution of the burden.

The main body of the laws which regulate the rights and obligations of the people should be maintained with as little interference as possible. Changes made should be mainly in procedure, and in the criminal laws to secure speedy and impartial trials, and at the same time effective administration and respect for individual rights.

Tribal holdings permitted.

In dealing with the uncivilized tribes of the islands the commission should adopt the same course followed by Congress in permitting the tribes of our North American Indians to maintain their tribal organization and government, and under which many of those tribes are now living in peace and contentment, surrounded by a civiliza-

tion to which they are unable or unwilling to conform. Such tribal governments should, however, be subjected to wise and firm regulation; and, without undue or petty interference, constant and active effort should be exercised to prevent barbarous practices and introduce civilized customs.

Respect for personal and social rights of the people.

Upon all officers and employees of the United States, both civil and military, should be impressed a sense of the duty to observe not merely the material but the personal and social rights of the people of the islands, and to treat them with the same courtesy and respect for their personal dignity which the people of the United States are accustomed to require from each other.

The articles of capitulation of the city of Manila on the 13th of August, 1898, concluded with these words:

"This city, its inhabitants, its churches and religious worship, its educational establishments, and its private property of all descriptions are placed under the special safeguard of the faith and honor of the American army."

I believe that this pledge has been faithfully kept. As high and sacred an obligation rests upon the Government of the United States to give protection for property and life, civil and religious freedom, and wise, firm, and unselfish guidance in the paths of peace and prosperity to all the people of the Philippine Islands. I charge this commission to labor for the full performance of this obligation, which concerns the honor and conscience of their country, in the firm hope that through their labors all the inhabitants of the Philippine Islands may come to look back with gratitude to the day when God gave victory to American arms at Manila and set their land under the sovereignty and the protection of the people of the United States.

WILLIAM MCKINLEY.

V.

AN ACT TEMPORARILY TO PROVIDE FOR THE ADMINISTRATION OF THE AFFAIRS OF CIVIL GOVERNMENT IN THE PHILIPPINE ISLANDS, AND FOR OTHER PURPOSES.

Acts of the President concerning, and through the commission confirmed.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the action of the President of the United States in creating the Philippine Commission and authorizing said commission to exercise the powers of government to the extent and in the manner and form and subject

to the regulation and control set forth in the instructions of the President to the Philippine Commission, dated April 7, 1900, and in creating the offices of civil governor and vice-governor of the Philippine Islands, and authorizing said civil governor and vice-governor to exercise the powers of government to the extent and in the manner and form set forth in the Executive order dated June 21, 1901, and in establishing four executive departments of government in said islands as set forth in the act of the Philippine Commission, entitled "An act providing an organization for the Departments of the Interior, of Commerce and Police, of Finance and Justice, and of Public Instruction," enacted September 6, 1901, is hereby approved, ratified, and confirmed, and until otherwise provided by law the said islands shall continue to be governed as thereby and herein provided, and all laws passed hereafter by the Philippine Commission shall have an enacting clause as follows: "By authority of the United States, be it enacted by the Philippine Commission." The provisions of section eighteen hundred and ninety-one of the Revised Statutes of 1878 shall not apply to the Philippine Islands.

Governor, vice-governor, and commissioners to be appointed by the President.

Future appointments of civil governor, vice-governor, members of said commission, and heads of executive departments shall be made by the President, by and with the advice and consent of the Senate.

Tariff of duties.

SEC. 2.—That the action of the President of the United States heretofore taken by virtue of the authority vested in him as commander in chief of the army and navy, as set forth in his order of July 12, 1898, whereby a tariff of duties and taxes as set forth by said order was to be levied and collected at all ports and places in the Philippine Islands upon passing into the occupation and possession of the forces of the United States, together with the subsequent amendments of said order, are hereby approved, ratified, and confirmed, and the actions of the authorities of the government of the Philippine Islands, taken in accordance with the provisions of said order and subsequent amendments, are hereby approved: *provided,* that nothing contained in this section shall be held to amend or repeal an act entitled "An act temporarily to provide revenue for the Philippine Islands, and for other purposes," approved March 8, 1902.

President to maintain sovereignty and authority of the United States.

SEC. 3.—That the President of the United States, during such time as and whenever the sovereignty and authority of the United States encounter armed resistance in the Philippine Islands, until otherwise provided by Congress, shall continue to regulate and

control commercial intercourse with and within said islands by such general rules and regulations as he, in his discretion, may deem most conducive to the public interests and the general welfare.

SEC. 4.—That all inhabitants of the Philippine Islands continuing to reside therein, who were Spanish subjects on the 11th day of April, 1899, and then resided in said islands, and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain signed at Paris, December 10, 1898.

Citizens of the Philippine Islands.

SEC. 5.—That no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws.

Bill of rights.

That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf.

That no person shall be held to answer for a criminal offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself.

That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses.

That no law impairing the obligation of contracts shall be enacted.

That no person shall be imprisoned for debt.

That the privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the governor, with the approval of the Philippine Commission, wherever during such period the necessity for such suspension shall exist.

That no *ex post facto* law or bill of attainder shall be enacted.

That no law granting a title of nobility shall be enacted, and no person holding any office of profit or trust in said islands, shall, without the consent of the Congress of the United States, accept any present, emolument, office, or title of any kind whatever from any king, queen, prince, or foreign state.

That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

That the right to be secure against unreasonable searches and seizures shall not be violated.

That neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in said islands.

That no law shall be passed abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed.

That no money shall be paid out of the treasury except in pursuance of an appropriation by law.

That the rule of taxation in said islands shall be uniform.

That no private or local bill which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill.

That no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only.

SEC. 6.—That whenever the existing insurrection in the Philippine Islands shall have ceased and a condition of general and complete peace shall have been established therein, and the fact shall be certified to the President by the Philippine Commission, the President, upon being satisfied thereof, shall order a census of the Philippine Islands to be taken by said Philippine Commission. . . .

Philippine Assembly.

SEC. 7.—That two years after the completion and publication of the census, in case such condition of general and complete peace with recognition of the authority of the United States shall have continued in the territory of said islands not inhabited by Moros or other non-Christian tribes, and such facts shall have been certified to the President by the Philippine Commission, the President, upon being satisfied thereof, shall direct said commission to call, and the commission shall call, a general election for the choice of delegates to a popular assembly of the people of said territory in the Philippine Islands, which shall be known as the Philippine Assembly. After said assembly shall have convened and organized, all the legislative power heretofore conferred on the Philippine

Commission in all that part of said islands not inhabited by Moros or other non-Christian tribes shall be vested in a legislature consisting of two houses—the Philippine Commission and the Philippine Assembly. Said assembly shall consist of not less than fifty nor more than one hundred members to be apportioned by said commission among the provinces as nearly as practicable according to population: *provided*, that no province shall have less than one member: *and provided further*, that provinces entitled by population to more than one member may be divided into such convenient districts as the said commission may deem best.—*Approved, July 1, 1902.*

INDEX

Abso'utism, 2.
Academy at Annapolis, 133; at West Point, 133.
Adams, John, 150.
Addresses to King, 26.
Admission of a State, 262; of Texas, 265.
Agriculture, Department of, 188.
Alaska, purchase of, 164.
Albany, 14; Congress of, 23.
Alien and Sedition Law, 140; protests against, 141.
Ambassadors, 174.
Amendment of bills, 96.
Annapolis meeting, 50.
Annexation treaties, 163.
Appeal from Philippine to United States Supreme Court, 275.
Appendix: Ordinance of 1787; Articles of Confederation; Constitution of United States; President's instruct'ons to Philippine Commission; Act providing Philipp'ne Government, 371–413.
Appointments, 167; of inferior officers, 168; attitude of Senate to presidential, 168.
Appropriations for treaties, 159.
Aristocracy, 13.
Arizona, 261.
Army, of United Colonies, 28; organization of, 131; officers of, 132; size of, 132; training for, 133; temporary increases in, 183; later organization of, 183.
Arrests, 242.
Articles of Confederation, 28, 377.
Assemble, right to, 230.
Assemblies and governors, 5.
Assembly, Philippine, 275.
Assistants, Court of, 17, 18.
Association of United Colonies, 26.
Attainder, bill of, 143, 220.
Attendance in Congress, 80.
Attorney-General, 186.

Baltimore, Lord, 20.
Bancroft, on Declaration of Independence, 35.
Bankrupt, 122.
Bankruptcy, 121.
Belknap impeached, 213.
Bequests, 349.
Bicameral system, 58.
Bill, passage of, 92; different kinds of, 93; final act on, 96; origin of, 97; revenue, 97; of rights, 107, 216, 217, 219, 221–224.
Birth of a nation, 35.
Births, registration of, 324.
Blount impeached, 210.

Bonds, use of, 113.
Borrowing money, 112, 113.
Brooklyn, 14.
Burgesses, 12.
Burr, 150; conspiracy, 226.

Cabinet, 85; defects and advantages of American, 95; in presidential succession, 155; appointment of, 169, 178, 190; contrasted with English, 190; duties of, 190; English, 190.
California, never a Territory, 262; admitted, 264.
Campaign, 342; expenses, 343.
Carolinas, government in, 20.
Castle, man's house is his, 241.
Catholics not voters, 16.
Caucus, congressional, 340.
Caveat emptor, 349.
Charity, public, 354.
Charter, colonial, 286.
Chase impeached, 211.
Church and state, 19.
Church of England, 17.
Cities, government of, 317–321.
Citizen and party, 333; in relation to government, 324–355.
Citizenship, 117; special cases of, 120; State, 120.
Civil case, 351.
Civil Service Act, 173.
Civil War, 113.
Civil War debts, 111.
Claims, Court of, 198, 202.
Cleveland, his majority in New York, 150; withdraws treaty, 268.
Coahuila and Texas, 262.
Coin, token, 123.
Coining money, 122; power of government in, 123.
Colonial governments, 4; similarity of, 5.
Colonies, 1; classes of, 4; under England, 2.
Colonists, French, 3; English, 4.
Columbia, District of, 136, 199, 200.
Commerce, definition of, 114; prohibition of, 115; regulation of, 113, 143; Court, 203.
Commerce and Labor, Department of, 189.
Commercial intercourse, 360.
Commission, Civil Service, 173.
Commission, Electoral, 151.
Commission, Interstate Commerce, 114.
Commission, United States Philippine, 273–375; President's instructions to, 402–408.
Committee of the whole, 91; of States, 41.
Committees and legislation, 88; in the House, 88; in the Senate, 88.
Committees of Congress, 89, 90; their treatment of bills, 93; national, 341.
Common law, 16.
Commons, resolutions in, 23.
Communication between States, 367.
Community, rights of, 226.
Compensation of congressmen, 82.
Concord, 27.
Concurrent resolutions, 98.
Condemnation of land, 228.
Confederation, 1643, population of, 21; aim of, 21.
Confederation, Articles of, 28, 39; text of, 377–385.
Conflict of authorities on naturalization, 118.

Congregational Church, 13, 16.
Congress, 58; steps toward general, 22; first call for, 22; in New York, 24; meetings of, 76, 77; separate meetings of houses of, 77; adjournment of, 77; "executive session," 78; attendance of, 80; members of, 80; freedom of members of, 80; members' compensation, 82; members and officers of, 84; minor officers of 87; powers of, 103; limitation on taxing-power of, 106; may naturalize aliens, 118; restriction on powers of, 142, 143; and the Territories, 259, 260.
Congress at Albany, 23.
Congress, Continental, 28, 47.
Congress of 1774, 26.
Congress of 1775, 27.
Congress under Articles of Confederation, 41, 42.
Congressional caucus, 340.
Congressional district, 68.
Connecticut, popular government in, 19.
Consent, age of, 328.
Constable, 7.
Constitution, recommended to States, 52; adopted, 53; on militia, 135; and treaties, 160, 369; text of, 385–401.
Constitution, English, 205.
Constitutional Convention, 50, 51, 147.
Constitutionality of laws, 205; English position as to, 205.
Constitutions, State, 44.
Consuls, 174–177.
Contested elections, 78, 79, 342.
Contract of sale, 348; to serve, 331.
Contracts by minors, 325.
Convention, Constitutional, 50.
Convention, county, 335; order of business, 336; national, 339; State, 339; procedure of, 341.
Cooley, on restrictions imposed by the Constitution, 219.
Copyrights and patents, 126.
Coroner, 8.
Counterfeiting, 125.
County, 7, 8, 13; in southern colonies, 10; in Virginia, 10; in Maryland, 12; in New York, 15; in Pennsylvania, 15; government, 313–315; convention, 335.
Court martial, 213.
Court of Assistants, 17, 18.
Courtesy, senatorial, 169.
Courts, general, 11; quarterly, 11; county, 11, 12; inferior, 127; Federal, 195; circuit, 200; circuit, of appeals, 201; commerce, 203; customs appeals, 203.
Crimes, classes of, 353.
Criminal case, 353, 354.
Criticism, 233.

Deaf, dumb, and blind, 355.
Debts and their payment, 111.
Declaration of Independence, 29, 31, 33, 34.
Declaration of Paris, 131, 370.
Declaration of rights and grievances, 24, 26, 218.
Defectives, 355.
Delegates, 41; from Territories, 80.
Democracy, growth of, 301.
Departments, executive, 177.
Diplomatic agents, 174.
Direct legislation through State Constitutions, 291.
Direct taxes, 63.

Disputes, internal, 369.
District Courts, 199.
District of Columbia, 136.
District-Attorney, United States, 196.
Due process of law, 240.
Dutch, vessels, 24; in New York, 311.
Duties between nations, 359.

Economic freedom, 24.
Education, 325–327; compulsory, 326.
Election, of Representatives, 65; of Senators, 73, 75; judge of, 78; of President, 147, 148.
Elections, contested, 78.
Electors, presidential, 147–150.
Embargo of 1807, 115; attitude of New England toward, 116; purpose of, 116; effect of, 116.
Eminent domain, 227; in Territories, 228, 229.
Enabling Act, 261.
Enacting a law, 96.
English Cabinet, 85.
English Parliament, 60.
Equality, 236; of taxation, 106.
Equalization, 298.
Equity, 204; Grotius's definition of, 204.
Excise, 111.
Executive, collegiate, 146; influence of Washington in fixing form of, 146; Hamilton's proposal, 156; executive departments, 177; independence of, 190.
Exequator, 176.
Expatriation, 119.
Ex post facto laws, 221.
Extra sessions, 67.

Family, nature of, 329.
Federal and State governments, 281.
Federal courts, 127; need of, 195; relation to State courts, 195; origin of, 196; scope of, 196; law applied by, 207.
Felony, 353.
Feudalism, 14; in New York, 312.
Filibustering, 99.
Florida, 163.
Foreign affairs, 179.
Form of English government reproduced, 5.
Franklin, 27; his Articles of Confederation, 40.
Freedom, religious, 19; economic, 24.
Freemen, assembly of, 6; qualifications, of, 15, 17.
French and Indians, 22.
French Revolution, 221.

Gadsden Treaty, 164.
Game, 344.
General Sessions, Court of, 8.
Gerrymander, 68.
Gifts and bequests, 349.
Government, under Articles of Confederation, 41; taxation of means of, 107; of a Territory, 251; local, in New England, 308; and party, 337; land, 343.
Governments of Colonies, 5.
Governor, and assembly, 5; of States, 46; duties of, 299, 300.
Grand Jury, 303.
Guadalupe-Hidalgo, Treaty of, 164.
Guilds, 286.

Habeas Corpus Act, 16, 143, 216, 218; suspension of, 224, 225;

Bates on suspension of, 225; suspended by Lincoln, 225; presumed in America, 225.
Hamilton on Executive power, 156.
Harrison submits Hawaiian treaty, 268.
Hawaii, 98; annexed, 164, 268; government of, 269; made a Territory, 269, 270; judiciary in, 270; district court in, 272.
Hayes elected, 152.
House, 60; committees, 90; committee on rules, 92; and treaties, 159; on Jay's treaty, 162; in impeachment, 208.
Humphreys impeached, 212.
Hundred, 10; in Maryland, 11, 12.
Hungary, independence of, 367.

Impeachment, 72; cases of, 208, 210–213.
Implied powers, 138; attitude of parties toward, 139.
Independence, 29; project of, 30; Declaration of, 33; of Executive, 191; of judges, 206; national, 360.
Indians, 2, 115.
Individual control of property, 331.
Insane, the, 355.
Interior, Department of, 187.
Interstate Commerce Commission, 114.

Jay's treaty, 161; terms of, 162; Washington's view of, 162.
Jefferson, 150; on townships, 9.
Jews not voters, 16.
Johnson, President, impeached, 212.
Joint resolution admitting Texas, 263.
Journal, 93.
Judges, independent, 206; tenure of, 301.
Judges of Supreme Court, 127; number of, may be increased, 127.
Judgment, 352.
Judiciary of county, 11; of State, 300.
Jury, trial by, 16, 18, 304; Grand, 303; of one's peers, 306.
Justice, Department of, 185.
Justice of the peace, 8.
Justices of the Supreme Court, appointment of, 198.

Kentucky Resolutions, 141.
King, supremacy of, 3; Spanish, 3; and land, 218.

Land, acquiring government, 343.
Lands, northwestern, 39.
Law, parliamentary, 100; common, 216; of the land, 240; definition of, 358; international, 358.
Law-making, by States, 295.
Laws, all repealable, 143; *ex post facto*, 221.
Lease, 347.
Legal tender, 124.
Legal Tender Act, 206.
Legislative power, 58; not delegated, 142.
Legislatures, in colonies, 5, 45, 46; bicameral, 58; of States, 294.
Letters of marque, 130.
Lexington and Concord, 27.
Liberty, civil, 16, 238; nature of, 237; political, 238; religious, 239.

Local government in southern colonies, 10; in middle colonies, 11, 13; in the West, 315.
Louisiana, 10, 163, 258.

McKinley and Hawaii, 268.
Magna Charta, 216.
Majority, popular, 151.
Manila, government of, 297.
Manufactures, 13; restrictions on, 25.
Marque, letters of, 130.
Marriage, 328.
Marshal, United States, 196, 219.
Massachusetts as a royal province, 19.
Massachusetts Bay Company, 18.
Master and servant, 330.
Members of Congress, 80; of Continental Congress, 29.
Merit system, 171.
Messages of President, 165; general and special, 166; special, 167.
Mexico, 2.
Middle colonies, 13.
Mileage, 83; corruption in, 84.
Military Academy, 133.
Military organization of county, 9.
Militia, relation to Federal Government, 134; relation to State, 135; in Federal service, 136; in New England, 311.
Ministers, English, 94, 174.
Minor, the, 324.
Mississippi, question of, 363.
Missouri Territory, 258.
Monarchy *vs.* republicanism, 361.
Money, borrowing, 112; coining, 122.
Monroe Doctrine, 361.
Mortgage and foreclosure, 345.
Municipal government, in Philippine Islands, 276.

Nation, defined, 1; birth of, 35; new, 36; name of, 40.
National, convention, 339, 341; territory, 362.
Naturalization, 118; conditions of, 119.
Nature and liberty, 237.
Naval Academy, 133.
Navigation, 114; laws, 24.
Navy, Department of, 184.
Neutrals, in war time, 369; moral force of, 370.
New Amsterdam, 14.
New England, local government in, 6; Confederacy of 1643, 21; towns, 308; influence of in the West, 315.
New Englanders, 312.
New Mexico, 261.
New Netherland Company, 14.
New Netherlands, government of, 19.
New York, beginnings of, 14; Congress in, 24.
Nobility, title of, 144.
Non-intercourse, 26.
Non-interference, 360.
Northwest, Ordinance for the Government of the, 371–377.
Northwestern Territory, 249–254.
Notes, treasury, 123; as legal tender, 124.
Nullification, 142

Obligations, moral and legal, 351..
Office, removals from, 170.
Offices, and members of Congress, 84; and appointment, 167.
Oglethorpe's rule, 20.

Opposition to independence, 30, 31.
Ordinance of 1787, 251, 257; text of, 371.
Overseers of poor, 7.

Panama Canal, 113.
Paper money in Civil War, 206.
Parental duty and authority, 330.
Paris, Declaration of, 370.
Parish, 10; in Maryland, 12; in Virginia, 312.
Parliament, American colonists' view of, 4; prestige of, 4.
Parliamentary law, 100.
Parliamentary responsibility, 85.
Party, 31; government, 192; citizen and, 333; choice of, 334; committees of, 335; and the government, 337; organization in State, 338.
Patents and copyrights, 126.
Patroons, 14, 312.
Payments, 111.
Peck impeached, 212.
Peers, judgment of one's, 305.
Penn, William, 15.
Pennsylvania, government in, 19.
Pensions and bounties, 112.
People, rights of, 16; and government, 282.
Period of Representatives, 66.
Petition, of Right, 216, 217, 230.
Philadelphia meeting, 50.
Philippine Assembly, 275.
Philippine Commission, instructions to, 402–408.
Philippines, annexed, 165; government of, 272; act to provide government for, 409.
Pickering impeached, 211.
Piracy, 127.
Pirates, trial of, 128.
Plantations, 13.
Popular government, in Connecticut, 19.
Population on Atlantic coast, 2.
Porto Rico, annexed, 165; government of, 271; Organic Act, 271, 272; executive council of, 272.
Ports of neutrals, 370.
Postmasters, classes of, 187.
Post-office Department, 186.
Post-offices and post roads, 125.
Powers, delegated, 40; reserved, 40, 103; implied, 104; to tax, 105; of Congress, 138, 142; of President, 156–158; separation of, 178; of United States Philippine Commission, 274.
Preëmption laws, 343.
President, in legislation, 58; election of, 147; elected by House, 150; his compensation, 153; in treaty-making, 158; his messages to Congress, 165; and Supreme Court, 207.
Presidential, candidates, 151; term, 154; succession, 155; office, model for, 156.
Press, freedom of, 231.
Previous question, 99.
Privateering, 130.
Property, qualification, 16, 46; of minor, 324; distribution of, 330; control of, 331; private, destroyed for public good, 332; forms of title to, 344; real, 344; separate and community, 344; methods of transferring, 347.
Protection, governmental, 350.
Provincial Government Act, 278.
Provincial government in Philippine Islands, 278.

Public, school, 9; affairs, discussion of, 233; charity, 354.
Punishment of pirates, 128.

Qualifications, for freeman, 15; for voting, 16; property, 46; for Representative, 64; for President, 153.
Quarter Sessions, 8.
Quorum, 81.

Randolph on executive, 146.
Real property, 344.
Rebellion in Philippines, 273.
Record, Congressional, 93.
Regulation of commerce, 113.
Religious, freedom, 19; liberty, 239.
Removals from office, 170.
Representation, 59; of States, 53.
Representatives, House of, 60; number and apportionment of, 61; qualifications of, 64; of States in Senate, 71.
Reputation of other states, 367.
Resolutions, joint and concurrent, 98.
Responsibility, ministerial, 85.
Restrictions, on economic freedom, 24; on manufactures, 25; on Congress, 143; on State legislatures, 295.
Revenues, 43; use of, 108; Federal, 110.
Reviews, 233.
Revolution, "Right" of, 32; duration of American, 36.
Revolutionary action, 28; government, 29.
Rider, 97.
"Right" of Revolution, 32.
Right to vote, 234–236.
Rights, of people, 16; political, 117; of man, 221; of community, 226, 227.
Roads, post, 125.
Royal province, 19.
Rules, House Committee on, 92; suspension of, 98.
Russia ceded Alaska, 164.

Salary of President, 153.
Sale, contract of, 348.
San Lorenze el Real, Treaty of, 363.
Schools and their organization, 327.
Secession, 32.
Secretary, of State, 180; of War, 273.
Sedition Laws, 140.
Selectmen, 7, 309.
Self-government, 9, 21.
Self-preservation, 360.
Senate, 7; in State, 46; special purposes of, 71; corruption in, 73; president of, 83; committees, 89; in treaty-making, 158; attitude toward presidential appointments, 168.
Senators, number of, 72; classification of, 72; qualifications of, 73; election of, 73; project for popular election of, 75.
Servant, 330; hired, 331; tenure of position, 331.
Service, civil, 173.
Sessions of Congress, 76, 77.
Sheriff, 6, 7, 9, 11, 12.
Ship-building in New England, 25.
Shire, in England, 8; in Virginia, 10; officers of, 10.

Slave, as member of family, 330; under Louisiana civil code, 244.
Slavery, and representation, 63, 244; legislation on, 245–247; and Texas, 265.
Slaves, importation of, 143.
Soldiers, quartering of, 240.
South America, 2.
Southern colonies, 10.
Sovereign, new, in colonies, 36.
Spaniards and Indians, 2.
Spanish and English colonial systems contrasted, 2.
Speaker, 86, 87; salary of, 83.
Speech, freedom of, 231.
"Spoils system," 171.
Stamp tax, 23.
State, after the Revolution, 44; governments reformed, 44; citizenship, 120; Department of, 179; courts, power of, 196; admission of a, 260; from Territory, 261; its decline in importance, 282; its functions, 282–285; restrictions on the power of the, 283; constitution, formation of, 287; constitutions, 286–290, 292; legislatures, 294; taxation, 297.
States, sovereign, equality of, 359.
Statute and treaty, 161.
Steering committee, 89.
Strict construction party, 139.
Suffrage, 16.
Supremacy of King, 3.
Supreme Court, 127; decisions of, 197, 199; original jurisdiction of, 198; appellate jurisdiction of, 198; appeal to, from Philippines, 199, 275; sessions of, 199; of the Philippine Islands, 275.
Swedish Parliament, 60.
Tax, direct, 143.
Taxation, in colonies, 20, 23, 104; equality and uniformity of, 106; of governmental means, 107; purposes of, 108.
Taxes, 21; in colonies, 5; county, 11; direct, 63, 105, 109; classes of, 105; on imports, 108, 110; purposes of, 109; Federal, 109.
Tenure-of-office Bill, 170.
Term of President, 154.
Territorial delegates, 80.
Territories, status of, 254–257; organization of, 257; institutions of, 259; power of Congress over, 259; changed into States, 261.
Territory, national, 362.
Texas, 98; annexed, 164; history of, 262; made a State, 263.
Tie vote, 100.
Tilden, presidential candidate, 152.
Timber Culture Act, 343.
Token coin, 123.
Toleration, religious, 20.
Town, meeting, 6, 7; affairs, 7; in New York, 15; government, 308, 309; phases of history of the, 310.
Township, 9; in New England, 6; divisions of the, 317.
Trade, 40; English and Spanish, 2; restricted to England, 25.
Trading companies, 286.
"Trained bands," 12.
Treason, 137, 353; punishment for, 137.
Treasury, notes, 123; Department of, 180; officers of, 181.
Treaties, 367; and the Constitution, 160; and acts of Congress, 161; of annexation, 163–165.

Treaty, of peace, 1783, 36; of Paris, 1856, 131; Gadsden, 164; of Guadalupe-Hidalgo, 164; of Paris, 272.
Treaty-making power, 158, 369.
Trial by jury, 18, 24.
Troops against French and Indians, 22.
Truths, self-evident, in Declaration of Independence, 34.

Union, 21, 28, 31.
Urban and country population in United States, 318, *note*.
Utterances, privileged, 232; with conditional privilege, 233.

Vacancies in representation, 67.
Vestry, 313.
Veto, presidential, 191; right to, 234.
Vice-President, 86, 100; election of, 148, 155.
Virginia, government of, 18; Resolutions, 141.
Voting, privilege of, 15; in New England colonies, 15; in Continental Congress, 29; under Articles of Confederation, 45; in Congress, 98; in Territories, 259.

War, losses, 112; declaration of, by Congress, 128; without formal declaration, 129; with Mexico, 129, 264; in the Philippines, 129; with Spain, 129; in China, 129; of 1812, 129; Department of, 182.
Warrant, 242; general, 243.
Washington, 28; in the Convention of 1787, 51; President, 150; on Jay's treaty, 162.
Water rights, 344.
Weakness, of Articles of Confederation, 43; of general government, 47, 48.
Western, lands ceded, 249–252; States, local government in, 315, 316.
West India Company, 14, 311.
Whisky Insurrection, 226.
Wilkes's case, 243.
Wilkinson, General, 226.
Witnesses, 352.
Woman suffrage, 333.

Yeas and nays, 98.

THE GOVERNMENT OF MINNESOTA

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CHAPTER I

THE STATE GOVERNMENT

I. The State Constitution

The government of Minnesota rests on a state constitution framed by a constitutional convention, and adopted by a vote of the electors, October 13, 1857. The whole of it should be read and parts of it studied with care.

The most important of its fifteen articles is doubtless, the first, entitled *Bill of Rights.* It is a summary of certain immemorial rights which belong, or ought to belong, to every citizen of a free state. The state government may not abolish or diminish any of these rights. Prominent among them are: personal liberty, freedom of speech and of the press, trial by jury, private property, and religious liberty.

The second article gives to the State the name, *Minnesota,* by which she is known in all her transactions and records. The same article determines the boundaries of the State. The laws of Minnesota have not the least force outside the lines described, and the laws of other states have no force inside them; but the laws of the United States are in full force in Minnesota as in all other states.

Four articles are devoted to the organization, powers and procedure of the three great departments of government; legislative, executive and judicial. Other articles establish the

elective franchise, provide for public schools, confer the power of taxation, and authorize the organization of towns and counties.

A very important article of any constitution is that which provides for its own amendment or revision. The Minnesota legislature may, whenever it deems necessary, propose amendments to the constitution. The secretary of state is required by law to publish and circulate through county auditors a statement prepared by the attorney-general, showing the purpose and effect of any amendment proposed. A copy of this statement must be posted at every polling place in the State. If a majority of all the electors voting at the general election shall vote for and ratify the amendment, it becomes part of the constitution. Many amendments have been so made.

A revision of the whole constitution can only be made by a *convention* consisting of as many members as the state House of Representatives. Two thirds of the legislature may recommend, at any time, the electors of the state to vote for or against a convention. If a majority of all the electors voting favor a convention, it becomes the duty of the legislature to provide by law at the next session for calling the same. The draft framed by the convention must be submitted to the electors and, if it be ratified by a majority of all voting at the election, it becomes a new constitution. No such revision has yet been made.

II. The Legislative Department

1. Composition

The legislature consists of a senate and a house of representatives, the members of which are chosen by the electors of districts, established in the manner following: the respective numbers of senators and representatives are fixed by law; the State is then divided, also by law, into as many senatorial districts as there are senators, in such a way as to give all districts an equal population, as near as may be, according to the last state or national census; one, two, or more representatives are apportioned to each senatorial district, according to popu-

lation. At the present time, there are 63 senators and 120 representatives.

Any qualified elector is eligible to either house, provided, he is not holding any office, state or national, except that of postmaster. The term of office of senators is four years; that of representatives, two years. The salary of a senator or representative is $500. All members and officers are required to take an oath to support the constitutions of the state and nation before entering upon their duties.

The legislature is required to meet in regular session on the first Tuesday after the first Monday in January of each odd number year. No session may last more than ninety legislative days.

2. Powers

Because state legislatures generally have authority to enact bills, orders and resolutions of every nature, but few *powers* are specifically conferred by the Minnesota constitution. Each house is given the right to decide whether its members have been duly elected, to elect its own officers (except the president of the senate), to punish members and others for disorderly conduct, and to make rules for its own procedure.

The house of representatives has the sole power of impeaching the governor, secretary of state, auditor, attorney-general, and the judges of the supreme and district courts; that is, of accusing any of these high officers of corrupt conduct in office, or of crimes or misdemeanors. The senate, sworn as a court, tries all impeachments.

The legislature is authorized to provide by law for the removal of "inferior" state officers for neglect of or malperformance of duty. The two houses in joint convention elect senators of the United States, in the manner provided by act of congress.

The restrictions on the legislative bodies are numerous and extensive. It will be understood, of course, by students of this book that no state may do any of the things forbidden to states by the constitution of the United States; also, that all state laws in conflict with national treaties and laws of

congress are void. The state constitution specifically forbids the Minnesota legislature to do any of the following things:

To grant divorces,

To authorize lotteries,

To appropriate money for sectarian schools,

To reduce the salaries of judges while in office,

To surrender, suspend or contract away the power of taxation,

To enact any special law where a general law can apply,

To enact any special law in regard to a long list of matters stated in amending section 33 of article 4. This provision, adopted in 1892, put an end to much partial, ill-advised, and mischievous legislation.

The suspensive veto power vested in the governor has a moderating effect on the legislative bodies and may nullify their action.

An amendment to the constitution adopted in 1898, authorizing cities and villages to frame charters for their own government, and to amend the same at pleasure, has greatly curtailed the power of the legislature to impose governments on those municipalities. The amendment, forming section 36 of article 4, has been called the *Home Rule* amendment. The general law for the organization of cities does not operate in cities which may have adopted *Home Rule* charters.

3. Procedure

While the constitution authorizes each house of the legislature to make rules for its own procedure, it prescribes, at the same time, a number of rules superior to any the houses may make. They are such as experience has proved desirable or necessary, and they operate as restrictions on legislative power.

All sessions must be open to the public, except in cases requiring secrecy. No proper legislative business can be done in either house unless a majority of the members are present. Such number is called a *quorum*. Each house must keep a

journal of its proceedings, and have it published. All "yea and nay" votes must be recorded in the journals.

Bills for raising revenue, principally tax bills, must originate in the lower house. All other bills may be freely introduced in either house; but no bill may be presented during the last twenty days of a session, unless the attention of the legislature is called to some important matter of general interest by a special message from the governor. Every bill must relate to one subject only, and that must be expressed in its title.

Every bill must be read on three different days in each separate house; but, in case of urgency, this rule may be dispensed with by a two-thirds vote. Nevertheless no bill can be passed by either house, until it has been read twice at length. No bill can be passed on the last day of a session. A majority vote of all the members elected to each house is necessary to the passage of all bills, except those creating state debts, which require a two-thirds vote. After the passage of any bill it must be carefully "enrolled," signed by the presiding officers of both houses, and laid before the governor.

The number of bills introduced at each session is very great; to examine them, and to perfect and harmonize those found meritorious, is the work of standing committees in both houses. At this time there are 51 senate and 62 house committees. A bill not "favorably reported" by a standing committee will rarely be passed. The privilege of appointing these committees, accorded by the house of representatives to the speaker, enables him to influence legislation.

Immediately after the close of any legislative session, all its acts, orders and resolutions are published in the principal newspapers of the State, and not long after in a book called the "Session Laws," of such a year. At somewhat long and irregular intervals a commission of learned lawyers is appointed by the legislature to prepare a revision of all the laws previously enacted. They reject those which have become obsolete or superfluous, and carefully arrange and codify all that should remain in effect. The report of the commission when formally adopted by the legislature, supersedes the former

code. The last revision was in 1905 and is entitled "Revised Laws of Minnesota, 1905." A copy should be easily accessible to the student, and he should form the habit of resorting to it.

Soon after the close of each regular session of the legislature, the secretary of state publishes a volume entitled "The Legislative Manual." Because it has been invariably bound in blue cloth it is commonly called *The Blue Book*. It contains:

(1) All the "organic laws" with which Minnesota is or has been concerned;
(2) A brief history of the State, with an account of its various institutions;
(3) A roster of all the state and county officers, and much political and financial statistics. Every school district of the state is entitled to one copy. The student of Minnesota government should find much to profit and interest him in *The Blue Book*.

III. The Executive Department

1. The Executive Officers

The governor is the chief executive officer and head of the state. He is elected for the term of two years and until his successor is elected and qualified. He must have reached the age of twenty-five years, must be a citizen of the United States, and must have actually resided in the state during the year preceding his election.

His all-comprehending duty is to see that the laws are faithfully executed. For this purpose, he is authorized to call out the military and naval forces of the state. The relations of the governor to the legislature are close. He is required by the constitution to inform that body at each session of "the state and condition of the country." It is customary for him to recommend to their consideration such measures as he deems necessary or desirable. The messages of the governors have all been published in volumes called "Executive Documents," which are important for historians.

Because the governor is required to sign all bills which meet his approval, before they become laws, he is virtually a co-operator in law-making. Whenever, in his judgment, a bill presented to him ought not to become a law, it is his duty to return it to the house in which it was originated, with a statement of his objections. The constitution requires that body to reconsider it immediately and take a new vote on its passage. If less than two-thirds of the house vote for passage, the bill is "dead." If there is a two-thirds vote in favor of passage, the bill is sent to the other house, where similar action is taken. If both houses shall have passed the bill by two-thirds votes, it becomes a law, notwithstanding the objections of the governor. The governor of Minnesota holds not only the veto power over all bills as wholes, but he has the unusual power to disapprove of particular items in appropriation bills, while approving the remaining portions.

The governor has a very extensive appointing power to be exercised with the advice and consent of the senate. The constitution names only a state librarian and notaries public to be so appointed, but it adds "and such other offices as may be provided by law." Many have been so provided. In general, the governor fills all vacancies in state and district offices for unexpired terms or until the next election, without senatorial confirmation.

The constitution includes under the executive department, along with the governor, a lieutenant-governor, secretary of state, auditor, treasurer, and attorney-general. All of them are elected for two-year terms, except the auditor, whose term is four years. Their salaries are fixed by law.

The lieutenant-governor has no executive duties unless a vacancy occurs in the office of governor, in which event he is governor during the vacancy. He is ex-officio president of the senate and is entitled to double the pay of a senator. He has no vote except in case of a tie. He has been authorized by the senate to appoint its standing committees. The constitution requires the senate to elect a president pro tempore before the close of each session, who becomes lieutenant-governor in case of a vacancy in that office. It has happened

once in the history of the State that a senator so elected became, not only lieutenant-governor, but also governor.

The duties of the secretary of state, auditor, treasurer and attorney-general are indicated by their titles. The treasurer receives all moneys coming to the state, and can pay them out only as authorized by law. The auditor is the bookkeeper of the state, and it is his particular business to hold a check on all the transactions of the treasurer. The auditor also has charge of the public lands of the state.

The attorney-general is the law officer of the state, of all state officers, and of all boards and commissions created by law. He advises the governor and heads of departments in matters relating to their official duties and, when required by either house of the legislature, gives his opinion in writing on questions of law. He is charged especially with the prosecution of corporations for violating laws. He is required to advise town, village, city, and county attorneys on questions of public importance. The duties of the attorney-general have so multiplied that he is allowed by law the aid of three expert assistants.

2. Administration

A moment's reflection will reveal the fact that these six executive officers named in the constitution, residing at the capitol, could never attend to the multifarious affairs relating to the welfare of the people spread over the whole territory of the state: to such matters as roads, schools, elections, taxes, public health, railroads, forests, fish and game, food inspection, the poor, liquor selling, the militia, prisons, asylums, public buildings and others. The care and management of such affairs belong to what is called *administration.*

One part of administration is committed to individual officers authorized by law and mostly appointed by the governor and the senate. At the head of these in point of importance, stands the state superintendent of public instruction. The commissioner of labor, the insurance commissioner, and the dairy and food commissioner exercise important duties suggested by their titles. An office of very high importance is

that of public examiner, whose duty is to supervise the books and accounts of all state institutions, of all state and county auditors and treasurers, and of all financial corporations, and to report any failure in duty discovered.

Other branches of administration are committed to boards and commissions of which there are forty or more. A few of the most important may be mentioned here.

(1) The Minnesota Tax Commission composed of three electors appointed by the governor and senate for six-year terms.

(2) The State Board of Control consisting of three electors appointed in the same manner for six years. This board has full control and management of all the penal and charitable institutions of the state and the right to supervise and regulate all private institutions of charity.

(3) Another very important board is The State Board of Railroad and Warehouse Commissioners. It consists of three members chosen by the electors for four-year terms. This commission has the duty of inquiring, either on its own motion or on complaint of aggrieved parties, into the reasonableness of any railroad or elevator, "rates, fares, charges or classifications"; and if it finds any of them unequal or unreasonable, it has the right to establish a *tariff* which shall be equal and reasonable. Such tariff must be immediately put into effect; but the parties affected have the right to appeal to the courts. Very heavy fines are imposed for wilful disobedience of the orders of the commission. This commission also appoints the chief inspector of grain for the state, and regulates the management of all public grain elevators.

The members of these three boards devote their whole time to their duties and receive salaries fixed by law, while the numerous other state boards or commissions are generally appointed by the governor and senate for terms varying from two to six years and the members serve without compensation, but have their necessary expenses paid while engaged in their duties. As examples, may be mentioned:

The Minnesota State Board of Health and Vital Statistics,

The Minnesota Public Library Commission,

The Board of Visitors for Public Institutions,
The State Game and Fish Commission.

Still other branches of administration are committed to the local authorities of towns, villages, cities and counties.

IV. The Judiciary

The state constitution vests the judicial power of the state in certain *courts* by name, and in others which the legislature may by a two-thirds vote establish. There are three kinds of courts for the arbitration of controversies between private parties, and the trial of persons accused of crime.

1. The Court of the Justice of the Peace

Beginning with the lowest of the series, we have *The Court of the Justice of the Peace.* Justices of the peace are elected in every town of the state, and in many cities and villages, for two years. Their jurisdiction extends throughout their respective counties. They can try civil cases in which the amount in controversy does not exceed $100, and criminal cases where the punishment fixed by law does not exceed a fine of $100, or imprisonment in a jail for more than three months. Either party to a civil action in a justice's court may have it tried by a jury by paying one day's jury fees in advance. The jury will consist of twelve men unless the parties agree on six. In criminal actions the accused person is entitled to a jury trial, but he may, if he prefers, waive a jury and be tried by the justice alone. Parties not satisfied with the judgment or sentence of a justice may appeal to the district court. The justice of the peace derives his ancient title from the fact that he is specially charged with "keeping the peace." He has authority to arrest persons breaking the peace, and either send them to jail, or bail them. He can put a person threatening to commit an offense under bonds to keep the peace.

The law authorizes cities and villages having 2,000 inhabitants or over to have *municipal* courts instead of justices' courts. The judges are elected for four years. They

have all the powers and jurisdiction of justices of the peace and may try civil cases involving $500.

2. District Courts

Next above the justices' and municipal courts come the *district courts.* These are the principal tribunals for litigation. They have original jurisdiction in all cases, civil and criminal, and appellate jurisdiction in cases brought up from justices', municipal and probate courts.

The legislature from time to time divides the state into judicial districts and determines the number of judges each shall have. There are nineteen judicial districts at present. The judges are elected for four-year terms, and receive salaries fixed by law. When a judicial district embraces more than one county, the district court sits in each county at a time fixed by the judges and published by the secretary of state. In each county there is elected a clerk of the district court for a term of four years. He is required to keep his office at the county seat. His principal duty is to keep the records of the court. He receives a salary fixed by law and also fees for particular services. Every district judge has the right to appoint a stenographer and secretary. In old times all the proceedings of trials had to be written out in longhand, which was one cause of the proverbial law's delay.

Trials in the district court are by judge and jury. It is the province of the judge to decide all questions of law; issues of fact are decided by the jury. A party, however, to a civil action, may, with the permission of the judge, waive a jury trial. This is frequently done. The jury in a district court, often called a *petit jury,* is composed of twelve electors sworn to render a true and unanimous verdict according to law and the evidence given them in court. In 1890, an amendment to the state constitution was adopted authorizing the legislature to declare an agreement of five-sixths of any jury in a civil case to be a sufficient verdict. The legislature has taken no action as yet.

Besides the petit or trial jury of the district court, Minne-

sota retains in criminal cases the ancient grand jury system. The grand jury consists of twenty-three electors selected and summoned in the same way as trial jurors. Sixteen must be present to form a quorum, and twelve must agree to make any action valid. It is the principal duty of the grand jury to inquire into all public offenses committed in the county and to find "indictments" against all persons whom they believe to have committed such offenses. They have the aid of the county attorney in this duty. They are also charged with inquiring:

(1) Into the condition of the prisoners in jail.

(2) Into the condition and management of the prisons of the county.

(3) Into the misconduct of all public officers of the county. All deliberations are in secret.

3. The Supreme Court

Judges and juries are liable to error, and even to prejudice. The law is not always certain, and may be void. Civilized nations, therefore, provide in their judiciary systems for the reopening of trials and the rehearing of aggrieved litigants, in high "appellate" courts. The *supreme court* of Minnesota is such a court. It consists of a chief justice and four associate justices chosen by the electors of the state for six years. They receive salaries fixed by law, and the state constitution forbids the legislature to reduce the salary of any supreme or district judge while in office. The student may find the reason.

This court sits in the state capitol and holds two general terms in each year beginning in April and October. It has no jury. Cases come before it on appeal from the "inferior courts," and it has power to affirm, modify, or reverse their action in any case or to order a new trial. It has authority to declare any state statute found to be in conflict with the state or national constitutions to be no law. District courts have this power also, but subject to appeal to the supreme court.

Both the supreme and district courts have power, in addi-

tion to that of deciding cases, to issue certain orders in furtherance of justice, when petitioned for by parties substantially interested. Such orders are called "writs" and the law names six of the most important. They are writs of injunction, ne exeat, certiorari, habeas corpus, mandamus, and quo warranto. The student will look up these words in a large dictionary.

One of these writs is of such importance to every person that it should be well understood, namely: the writ of *habeas corpus*. The two Latin words mean, "bring the person" (named in the writing into court). It is the privilege of any person in the state who believes himself to be unlawfully restrained of his liberty, to apply for this writ, to be brought into court, to have his case inquired into immediately, and to be set at liberty unless just cause is found for his detention. A very heavy penalty awaits public officers who neglect to act promptly on such application. The "privilege of the writ of habeas corpus" is one of the effective safeguards of personal liberty. It can be suspended only in time of war or public danger.

The clerk of the supreme court is chosen by the electors of the state for a term of four years. The judges are required to appoint a reporter to edit and publish their decisions from year to year. The 100 and more volumes so published are known as "Minnesota Reports." The student may guess what this short citation means: "29 Minn. 280." The decisions of district judges are not printed and they need not be in writing.

4. The Board of Pardons

We have learned how the supreme court may rectify mistakes made by the trial courts, in criminal as well as in civil cases. But, even after this high court has reviewed cases, there may be question whether the ends of justice have been met. The constitution and laws therefore mercifully provide, *in criminal cases,* for the mitigation and even the complete remission of punishment. This is effected in Minnesota by the *board of pardons* composed of the governor, the attor-

ney-general, and the chief justice of the supreme court. This board holds regular meetings four times a year in the capitol, and acts according to regulations fixed by law. A unanimous vote of the members is necessary to the pardon or commutation of a sentence.

5. The Probate Court

There is still another court established by the constitution in every county, of a different character from those already mentioned—*the probate court.* The judge is chosen by the electors of the county for a two-year term. He appoints his own clerk. He has jurisdiction over the estates of deceased persons and persons under guardianship. Where wills are left, they must be proved (or probated) in this court; where there is no will, the probate judge appoints administrators to care for and dispose of property according to law. When it is observed that substantially all the private property in the county passes through the probate court in the course of a generation, the importance of this court is apparent. There is no jury in the probate court, but the judge listens to hearings on disputed matters and decides them subject to appeal to the district court.

V. The Electorate

Minnesota being a republic, her government originated with and is constantly maintained by her citizens. Not all citizens, however, are or can be, actively engaged in public affairs. The elective franchise, that is, the privilege of voting, is reposed by the constitution in a selected class of citizens called *electors,* or sometimes *qualified electors.* The body of electors consists principally of male persons twenty-one years old and upwards, of sound mind, who are citizens of the United States. No elector can vote at any election unless he has resided in the state six months preceding that election, and in the election district thirty days. Women, possessing the same qualifications, may vote for public school and public library officers and measures. Indians and mixed bloods, who

have adopted the habits and customs of civilization, may become electors.

The whole number of registered male electors who voted in 1910 was 310,165; of female electors, 16,127. The population of the state in that year was 2,075,708.

Generally speaking, every elector is eligible to any elective office, but the constitution provides that judges of the supreme and district courts must be "persons learned in the law," which means lawyers who have been admitted to the bar. Women may be elected to school and library offices and no others. They may, if citizens, hold appointive offices.

All state and county elections are held on the first Tuesday after the first Monday in November in every even number year. Persons then elected take office on the first day of January following.

CHAPTER II

LOCAL GOVERNMENT

I. Town Government

It is an American principle that the public affairs of any neighborhood, district or province ought to be controlled by the electors thereof. The principle is specially effective in the minor subdivisions of states, and results in what is known in the science of politics as *local administration.*

The whole area of Minnesota has been, or will have been, when it is all surveyed, divided by the national survey of the public lands into six-mile squares, called *townships.* A township has 36 square miles called sections, each of which is further subdivided. The inhabitants of a township organized for political purposes form a *town,* whose electors are authorized by law to act as a body politic to a limited extent.

At the annual town meeting held on the second Tuesday in March, the electors choose by ballot the following town officers: a supervisor, for three years; a treasurer, a town clerk, and one overseer of highways for each road district, each for one year; and every two years, two justices of the peace and two constables. In each odd number year a town assessor is elected for two years.

The three supervisors in office compose the "town board," which has general charge of town affairs, and in particular of its finances. The treasurer receives and keeps the moneys of the town and pays them out only on orders of the board, signed by the chairman of the board and the town clerk.

Besides electing the town officers, the electors have power at the annual town-meeting to make by-laws regarding stray

1	2	3	4	5	6
12	11	10	9	8	7
13	14	15	16	17	18
24	23	22	21	20	19
25	26	27	28	29	30
36	35	34	33	32	31

Township, 6 miles square; 36 sections, each 1 mile square. Sections 16 and 36 are the school sections.

animals, fences, roads and bridges, town halls, and cemeteries. They also vote the amount of money to be raised by tax for town purposes.

II. Village Government

Village government is similar to that of towns. Annual village elections take place on the same day as town meetings. The officers then elected are: a village council, consisting of a president, a clerk, and three trustees; also a treasurer, all for the term of one year; also, every two years, two justices of

the peace, unless a municipal court has been established; and two constables. The village assessor is elected in odd number years for two years.

The village council has larger powers than a town board. It has authority to appoint, when necessary, an attorney, a poundmaster, a street commissioner, fire wardens, a marshal and policemen. It has authority, also, to establish a fire department; to open, close, improve and light streets; to establish and regulate markets; to acquire and improve lands for parks and cemeteries; to regulate amusements; to prohibit gambling and immorality; to issue and revoke licenses for the sale of intoxicating liquors; to establish public libraries; to build and maintain a village jail; to establish a board of health and to provide a water supply. It can levy taxes without a vote of the electors, and can prescribe penalties for violations of village ordinances. The treasurer is under the same "checks" as the town treasurer. The president and trustees are peace officers, authorized to suppress disorders in a summary manner and to command the assistance of all persons under penalty.

III. City Government

The cities of Minnesota have mostly been organized by special acts of the legislature called *charters,* which are quite uniform in character. There is, however, a general law for cities. City elections take place on the same day as state elections or in some cases on certain days in a spring month. The officers elected are: a mayor, a treasurer, a municipal judge, and a board of aldermen, generally for two-year terms.

The city council, composed of aldermen elected from wards, has power to levy taxes for city purposes, and may incur debts not exceeding, in the aggregate, five per cent of the value of the taxable property of the city. It has power to enact ordinances relating to all matters mentioned above as within the competence of village councils, and other objects allowed by law. The council "appoints" the city assessor, the city engineer, the city physician, the superintendents of poor, of the

workhouse, parks, etc., and some minor officials. The city clerk is in most cases elected, because it is a large part of his duty to keep a check on the treasurer. In some large cities a comptroller or auditor is elected to relieve the clerk of this duty. In such cases the city clerk is generally appointed by the council.

Because of the large appointing and legislative power of the council, Minnesota cities generally have what has been called the *council* form of city government. In a few cities the appointing power has been transferred to the mayor, and they have what is called the *mayor* form of city government. In some large cities the care of parks, public libraries, the public health, hospitals and city prisons is placed in the hands of boards or commissions, the members of which serve without pay, but are allowed their necessary expenses when on duty. They have power to appoint the necessary officers and servants, and in some cases to levy taxes for their particular purposes. St. Paul has a council divided into two bodies, an assembly and a board of aldermen, the concurrence of which is necessary to action.

The principal duty of the mayor is to see that the laws of the state and the ordinances of the city are enforced. To this end he appoints and may suspend or remove all policemen, and has, at all time, full control of the police force. He has suspensive veto on all acts of the council, and signs all warrants, bonds and contracts.

Under the so-called *Home Rule* amendment to the state constitution ratified in 1898, already mentioned, Minnesota cities and villages have the right to make and amend their charters within limits fixed by law. The judges of the district court appoint a charter commission of fifteen freeholders. The commission drafts the new charter or amendment and submits it to a vote of the city electors. A majority of four-sevenths is necessary to adopt a new charter, but subsequent amendments may be ratified by a two-thirds vote.

The city of Mankato, proceeding under the *Home Rule* amendment, has adopted the so-called *Commission* form of city government. The electors of that city choose a mayor and

four councilmen at large. The five compose the city council. They appoint all other officials and servants except the municipal judge, who is elected. This council holds all the legislative and executive powers of the city. Each member has charge of a department of the city administration, the mayor taking that of public health and police.

To enable the legislature to pass general laws suited to cities of differing size they have been divided by law into four classes, as follows:

First class. Those having more than 50,000 inhabitants.

Second class. Those having more than 20,000 and not more than 50,000 inhabitants.

Third class. Those having more than 10,000 and not more than 20,000 inhabitants.

Fourth class. Those having not more than 10,000 inhabitants.

According to a law passed in 1907 every Minnesota city has power to own and operate any of the following "public utilities": street railways, telephones, water works, gas works, and electric light, heat and power works.

IV. County Government

The legislature, as authorized by the state constitution, has divided the state into counties, and has power to establish new counties. Each has its county seat, which can be changed only by a vote of the electors of the county.

The control and management of county affairs is principally in the hands of the *County Board,* composed of commissioners elected from separate districts. Counties, having over 500 square miles and over 75,000 inhabitants, have seven commissioner districts; others have five. The members of the board are elected for four years and receive salaries varying from $100 to $1,200 according to the value of the taxable property of the county. The county board has full control of the property and finances of the county, determines the amount of money to be raised by taxation for county purposes, directs

all expenditures, and examines and passes on all accounts and vouchers. It has the care of county roads and bridges, maintains the county court house and jail, and in some counties has the care of the poor.

The elective officers of the county are: the county auditor, the county treasurer, the register of deeds, the sheriff, the county attorney, the county surveyor, the coroner, and the county superintendent of schools.

The duties of these officers are mostly indicated by their titles. The county auditor is clerk of the county board, is bookkeeper of the county, and holds a rigid check on the county treasurer. Every citizen concerned has the privilege of having deeds, mortgages and other documents relating to landed property recorded in the office of the register of deeds. If such documents are lost or destroyed, the copies in that office are good evidence of title to or interest in land. The sheriff attends on the sessions of the district court, summons jurors and witnesses, and executes the orders and decrees of the court. He is the principal "peace officer" of the county, and may call on bystanders to assist him in making arrests and quelling riots. Any person who refuses his aid is liable to be punished for a misdemeanor. The coroner's business is to investigate cases of death by violence; and ascertain who, if anyone, is criminally implicated.

It needs to be remembered that while "municipalities," that is, towns, villages, cities, and counties, have a considerable range of power in local government, all that power is derived from the state legislature, in which all legislative powers is vested by the state constitution. Legislative power may be delegated to municipalities, but to no other bodies, not even to the electors themselves, except in the very few cases of "referendum" provided for in the state constitution. All municipalities are declared by law to be "corporations," and as such may sue and be sued, and may take, hold, and dispose of property for public purposes.

Although municipalities exist for local government, they also serve as administrative agencies for the state. For example:

All town, village, and city assessors act for the state as well as for their several jurisdictions;

County auditors apportion the state taxes to taxing districts of their counties;

County treasurers collect the state taxes in their counties and pay them over to the state treasurer;

The elections of state and district officers are conducted by municipal agents and officials;

The enforcement of state laws relating to public health is left to local boards of health;

The granting of licenses for the sale of intoxicating liquors is confided to village and city councils and county boards;

The management of public schools is confided to trustees of common, special, and independent districts;

All crimes are offenses against the state, but they are tried and punished in the counties where they are committed.

CHAPTER III

IMPORTANT LAWS

I. Election Laws

The state constitution prescribes the qualifications of electors; fixes the times for holding general elections; and requires all elections, with a trifling exception, to be by ballot. It leaves all details to be determined by the legislature.

Each town, village and city ward constitutes at least one election district. Councils and town boards may increase that number but may not put more than 400 voters in a district, except where voting machines are used, and then they may put in 600.

Town boards act as judges of election in rural districts, and municipal councils appoint three judges for each village or city election district. The judges of each district appoint two clerks of election, but the town clerk must be one of the two. The first duty of the election officers is to attend to the *registration* of voters. On certain days before every general election they make up complete lists of all persons entitled to vote in their respective districts.

As each elector presents himself on election day he is identified by the judges and his name found on the registration list. He is then furnished with printed ballots containing the names of all candidates to be voted for. Taking these, he enters a booth, and there, alone and out of sight, makes an "X" mark opposite the name of every candidate for whom he votes. He then leaves the booth and hands his ballots, separately folded so as to conceal all his marks, to one of the judges, who immediately drops it into the ballot box, and calls

out the name of the voter. The word "Voted" or the letter "V" is written in the proper column opposite the voter's name. This plan of voting, established in 1891, was intended to prevent fraudulent voting and has proved effective.

In a few large cities voting machines have been put in use as allowed by law. Instead of marking printed ballots the voter pushes down certain buttons opposite the names of his preferred candidates. When the last man has voted, the count has been mechanically made. The "canvass" of votes, when printed ballots are used, is a tedious process.

The law prescribes very severe penalties for violations of the election laws. False registration, unlawful voting, bribery, misconduct of election officers, and destruction of election returns are declared to be felonies. Among misdemeanors, are such offenses as coercing of voters, refusing employees time to vote, wilfully defacing ballots, issuing defamatory circulars, and the like. The law prescribes the kind and amount of expenditures a candidate for an elective office may make or have made to further his election; and requires every candidate to file, within three days after the election, a sworn statement of all such payments by or for himself. Failure to render such account is a gross misdemeanor and no certificate of election can be issued to the person neglecting this duty. The law specifically forbids any corporation organized for profit from contributing money to aid the nomination or election of any candidate for office. Any officer, stockholder, agent, or employee of such a corporation or company who consents to, or takes any part in such a contribution may be fined $1,000 or sent to the state prison for one year, or both. The object of these provisions is to prevent *corrupt practices* in elections.

The nomination of candidates for office was, until lately, left to party conventions. This plan has been partly superseded by so-called "primary elections" held under the same rules and restrictions as the general elections following. The primary election does not apply to state offices; to town, village, and small city offices; nor to certain city boards. The flag of the United States must be kept hoisted over every voting place, when registration and voting are going on.

Elections are by far the most important part of republican government. The student who will spend the entire day at some general election and keep his eyes and ears open, will have a better understanding of the election laws and procedure under them, than he can acquire by merely reading the constitution and statutes.

II. School Laws

The public schools of Minnesota like those of other states are in charge of a separate "administration." This keeps them out of politics.

All the inhabited townships of the State are divided by county boards into common school districts. A new district must contain at least four sections of land and at least twelve resident children of school age. The annual school meeting is held on the first Saturday in July. All the electors, male and female, of the district are entitled to vote. The school meeting has power to vote money for maintaining the school and a library, to authorize the erection or improvement of school buildings, and to provide for free text-books. All other school matters are left in charge of a board of trustees, known as the *school-board*. It is composed of a chairman, a treasurer, and a clerk, one of whom is elected at each annual meeting, to serve for three years.

Villages and cities generally form single *independent* school districts, each having as many schools as may be deemed necessary. Their schools are commonly graded, and the more important have high schools. The management is in the hands of a board of directors, elected for six years. The board elects its own officers and a superintendent of schools, who becomes a member of the board without a vote. Some of the older villages and cities have had their school systems established by special acts of the legislature and for this reason are said to form *special* school districts. Their organization and management differ in details only from those of independent school districts.

The employment of teachers for public schools of all kinds

is in the hands of school boards, but they can employ only persons who have been found qualified by public examinations, and have furnished proof of good moral character.

All the common schools of the state are under the supervision of the state superintendent of public instruction, appointed by the governor and confirmed by the state senate. Under him are county superintendents, one being elected in each county for the term of two years. Independent and special school districts are not under the supervision of the county and state superintendents, but certain reports are required of them. Instruction is free in all public schools, and text-books may be furnished free by a vote of school meetings.

The costs of supporting the district schools are derived from the following sources:

1. The interest on the invested state school fund derived from the sale of school lands granted by the national government to the Territory of Minnesota in 1849, being sections 16 and 36 in every township. The fund now amounts to nearly $25,000,000;
2. The annual state school tax of one mill on the dollar;
3. The annual county school tax of one mill on the dollar;
4. The "district school taxes" levied in and by each district;
5. "State aid," so-called, consisting of annual appropriations of money out of the state treasury to encourage and to reward efforts of school authorities to improve their schools. The sum of $100,000 is distributed every year to those common school districts which employ teachers holding first or second grade state certificates; provide suitable buildings, library, and apparatus; and maintain their schools for not less than eight months. Similar aid is granted to high schools, graded schools, and semi-graded schools. The high school board has the management of the aid provided for these schools.

A late statute has provided for the "consolidation" of the rural school districts of counties into new districts from four

to six miles square. The movement toward consolidation may be started by the county board of any county at its pleasure; and whenever twenty-five per cent of the resident freeholders of the county living on farms sign and present a petition to the board, it becomes its duty to organize a "consolidation commission" of seven persons to formulate a plan and prepare a map of the new districts. This plan must then be submitted to a vote of the electors, male and female, of the county; and a majority is necessary to its adoption. The intention of the law is to abolish small and isolated schools and replace them with larger ones, better housed and equipped, where the pupils may be graded and instructed by better teachers than can commonly be employed for the small schools. The plan implies and authorizes the free transportation of the pupils to and from their homes. Sufficient time has not passed to permit the operation of this excellent plan on any large scale.

Another recent development in education in Minnesota is the law which empowers any county board, when authorized by a vote of the electors of the county, to establish a county school of *agriculture and domestic economy*. Such schools are to be managed by a board of three trustees. The county superintendent of schools is one, and the other two must be appointed by the county board. The law requires instruction to be given in the elements of agriculture, including the soil, the plant life, and the animal life of the farm; and in farm accounts, manual training, and domestic economy. Each school must have at least ten acres of land suitable for experiments and demonstration. These schools are free to all inhabitants of the counties, provided they shall have had a common school education. They may share in "state aid" by conforming to a certain standard.

Still another novelty is the law authorizing city high schools in limited numbers to open and maintain agricultural departments open to all residents of the state, and to receive state aid for so doing. As agriculture is, and will always remain, the leading industry of the state it is reasonable that great efforts should be made to increase its efficiency by the

diffusion of science, the improvement of seeds, animals, and machinery; and the training of cultivators in the best farm processes.

The six State Normal Schools and the University of Minnesota belong to the state system of public schools, and instruction is free in all of them, except in the "professional" departments of the University.

To Minnesota belongs the credit of first giving the public schools of a state a complete and effective organization. The common schools have always been free. When the University was opened, instruction therein was made free with the exception just noted. Instruction was free in the high schools of cities and villages, but *only* to pupils residing therein. The secondary education, therefore, was not free outside of cities and large villages. In 1878, a law was passed to grant aid to all high schools which, having proper equipment and teachers, would arrange courses of study preparatory to the University, and admit thereto pupils of both sexes from any part of the State free of tuition. This law has been very effective and there are now more than two hundred high schools fitting students to enter the University. School education in Minnesota is accordingly free from the kindergarten to the doctor's degree in the State University.

The Minnesota schools are open to all the children of the state. The law provides that any member of a school board, who without sufficient cause or on account of race, color, nationality, or social position, votes for the exclusion, expulsion, or suspension of any person entitled to the use of the school shall forfeit fifty dollars.

Minnesota law makes the district schools free, but at the same time and properly, makes attendance in them compulsory. Every resident of a school district having charge of any child between the ages of eight and sixteen (in first-class cities, eight and eighteen) years must send such child to a public or private school in each year during the entire term the public schools are in session, unless excuse has been granted by the school board for one of the reasons named in the law. Violation of this provision of law is a misdemeanor punishable

by a fine of not over fifty dollars, or imprisonment in jail for thirty days or less.

School boards are authorized to employ *truant* officers and establish *truant* schools for children who absent themselves without proper excuses from their schools. Only in a few large cities has this been found necessary.

Under the head of "Crimes against morality, decency, etc.," the Minnesota statutes provide that every school pupil under age who shall smoke or use cigars, cigarettes, or tobacco in any form in any public place shall be guilty of a misdemeanor, and be punished for each offense by a fine of not more than ten dollars, or by imprisonment in the county jail for not more than five days. Any person who furnishes a minor pupil with tobacco in any form is guilty of a misdemeanor, and the maximum penalty is fifty dollars fine or thirty days' imprisonment.

The intention of the law to discourage vice, promote health, and inculcate good morals and conduct is shown by such provisions as that which requires the teachers in all public schools to give instruction in morals, physiology, and hygiene, and in the effects of narcotics and stimulants.

There is also a statute which forbids any pupil of a public school from becoming a member of any secret fraternity, or soliciting another pupil to join one. School boards have power to suspend or dismiss those who violate this law.

III. Taxation

No government can be maintained without a great deal of money. The Minnesota constitution, therefore, provides that the "power of taxation shall never be surrendered, suspended, or contracted away." The principal source of revenue for public purposes is the assessed tax on real and personal property. The process of obtaining this revenue is too complicated to be described here. It would form an excellent topic for collateral study.

In brief, however, it may be said that all the property in the State or owned in the State is listed and assessed, and the results recorded in the offices of the county auditors. The

amounts of money to be collected for state and municipal purposes are next ascertained. County auditors then "extend" the taxes, so as to charge each taxable person with his rateable proportion. They then turn over the completed tax books to the treasurers of their several counties. County treasurers collect all the taxes and distribute the money in proper amounts to the State and to the municipalities, school districts included.

If a person does not pay his personal tax within the time allowed by law, the sheriff seizes a sufficient amount of his goods and chattels and sells them at public sale. When taxes are delinquent on real estate, the land is sold at public sale by the county auditor; but it may be *redeemed* at any time within three years. It is understood that all public property is exempt from taxation; so, also, is property used for purely educational and charitable purposes. All such property is, however, listed and assessed.

Another source of revenue is the tax imposed on railroad, express, and telephone companies, being a certain percentage of their gross earnings within the State. Railroad companies pay four per cent; express companies, six per cent; and telephone companies, three per cent. The properties of these companies are not listed and assessed. The state treasurer collects these taxes and holds the money in the state treasury for state purposes.

Still another, and a novel form of taxation is the so-called *inheritance tax.* This is a tax levied on the estates of deceased persons, who leave property worth more than $10,000, but only on the *excess* of that sum. The rate is said to be "graduated." When the said excess is under $50,000, the rate is one and one-half per cent; when over $50,000 and under $100,000, it is three per cent; when it is over $100,000, five per cent. This tax is paid to the county treasurer, who immediately transmits the whole amount to the state treasurer, to be devoted to state purposes.

There is still another kind of taxation. Up to 1907 mortgages on land were included in personal property and were supposed to be listed and assessed accordingly. As a fact the

tax was very generally evaded. The student may inquire by what means. Under the law enacted in the year mentioned the only tax on mortgages now is one of fifty cents on each $100 of the debt secured by the mortgage. This tax must be paid before the mortgage can be recorded. The tax goes into the county treasury.

The taxing system of this state, like that of others, is well understood to be defective. The tax commission is charged with the duty of investigating the tax laws of other states and countries, and of submitting such propositions for the improvement of our own as they may think worthy of consideration.

IV. The Militia and National Guard

In ordinary times the officers of the peace are able to enforce the judgments of the courts and to suppress disorders. There are, however, extraordinary occasions when a large armed force is necessary to put down riots and insurrections, restrain Indians, and even repel hostile invasion. All organized states, therefore, have some plan for collecting an armed force.

Minnesota has two such ways. First, the state *militia* composed of all able-bodied male citizens between the ages of 18 and 25, except such as may be in the United States army or navy, ministers of the gospel, Indians not taxed, insane persons, and persons who have been convicted of infamous crimes. When the state census is taken in the middle of each decade the enumerators are required to ascertain and designate all men liable to military duty. The adjutant general of the state is, thereupon, required to make up tables of the men so designated in each town, village, and city, arranged by counties. In this way a complete enrollment of the militia is made. The governor may require tax assessors also to make similar lists of militia men.

In the older states of the Union the militia was formerly organized, armed, and drilled. This was not difficult in times when every householder kept a hunting rifle. Instead of arming the whole militia our states, Minnesota among them, have adopted the plan of an active militia under the title of

National Guard. The Minnesota National Guard consists in time of peace of three regiments of infantry forming a brigade, and one battalion of field artillery. These are manned and officered by volunteers and have the organization, uniform, arms, and discipline of the regular army of the United States. The state owns an encampment ground at Lake City where the national guard assembles from year to year for instruction and exercise. The Minnesota National Guard is, therefore, an actual armed and disciplined force, which the governor may call out to enforce the laws, or suppress disorder.

V. Liquor Laws

All state legislatures hold a so-called *police power* to provide for the health, safety, and welfare of the people. This power is exercised in many ways: to relieve the poor, to prevent the adulteration of foods, to prevent the spread of epidemic diseases, to preserve fish and game, and the like.

One of the best examples of the police power is that employed for the control of the sale of intoxicating liquors. Some states, Maine and Kansas, for example, entirely forbid the sale of intoxicating liquors for drinking. Minnesota has preferred to regulate such sale. The following are the principal provisions of law for that purpose:

1. No person may sell any intoxicating liquors to be drunk on the premises without a license. Licenses are issued by village and city councils and county boards to persons found after investigation in each case to be of good moral character and otherwise qualified. Persons so licensed must pay an annual fee ranging from $1,000 in large cities down to $500 in other places, and each must furnish a bond of $2,000 "conditioned" that he will keep a quiet and orderly place, permit no gambling, and comply with the liquor laws in all respects. Any place where drinking is carried on without license is declared by law to be a public nuisance; and any person who keeps such a place or leases or lets any building or room for such purpose is guilty of a misdemeanor.

2. Towns and villages have the power to decide by a majority vote of their electors whether liquor licenses shall be granted therein. If the vote is against license, no license can be issued until that vote is reversed at a later election. This is commonly known as *town option;* and many towns and villages have voted *dry.* A large number of citizens are in favor of *county option,* but have not been able to secure its establishment by law.
4. No sales can be made even under license in certain places: in the State capitol, within one mile of the State University on the east side of the Mississippi river, within 1500 feet of any state normal school, or rural school, nor within two miles of any camp meeting. The law further forbids the introduction of liquor into armories of the national guard, the state prison, and city and village lockups. No justice of the peace may hold court in a saloon or room adjacent to or connected with one; and no election may be held in any such place.
5. No sales, even under license, can be made to certain persons: minors, pupils, or students in any educational institution in the state, drunkards, or intoxicated persons, persons of Indian blood, spendthrifts after due notice, and persons on parole from any state institution.
6. Licensed druggists may sell upon the written prescriptions of reputable, practising, and licensed physicians.
7. Other noteworthy provisions: Drunkenness is declared by law to be a crime punishable by fine or imprisonment. No elector is allowed to vote when grossly intoxicated. Any public officer in the state may be removed from office for habitual drunkenness. No railroad employee concerned in the running of trains or keeping of stations may be intoxicated while so engaged. The same rule applies to steamboat employees. Should not drivers of automobiles be included?

All these provisions of law are sanctioned by severe penalties. All sheriffs, constables, marshals, and policemen are required to summarily arrest any person violating them.

They may not wait till some other person has lodged a complaint. All officials, including members of county boards and municipal councils who refuse or neglect to perform their duties under the liquor laws, are declared guilty of malfeasance, to be removed from office, and to pay fines ranging from $100 to $500.

The student may form his own opinion of a business which needs so much regulation. The only perfect remedy for the abuse of intoxicating liquors and narcotics is the universal disuse of them for drinking.

VI. Corporations

The advantages of uniting talent and capital for the prosecution of large business operations need neither proof nor illustration. One well-known way of forming such unions is by partnership. But, there is this notable drawback to partnerships, that if one of the partners dies the partnership is at an end and the business has to be wound up. To overcome this difficulty the form of association known as the *Corporation* was long ago invented and legalized. In early times, in England and America, corporations were created by special acts of the legislature called "charters."

This plan has given way to the better one of permitting the organization of corporations under general laws. Minnesota has such a general corporation law. Under its provisions any three or more persons may form a corporation, by carefully observing the following directions:

1. They must sign and acknowledge a *certificate of incorporation* showing:
   - *a.* The name, the business, and the place of the corporation;
   - *b.* The time it is to last, if limited;
   - *c.* The names and residences of the incorporators;
   - *d.* The names and addresses of the first directors and the date of its annual meeting;
   - *e.* The amount of its capital stock, if any, and the number and par value of its shares.

f. The amount of debt which the corporation may incur.

2. This certificate must be filed for record with the secretary of state, and with the register of deeds of the county of the place of business named.
3. The certificate must next be published twice in full in a qualified daily newspaper of the county, and proof of such publication (usually the printer's affidavit) must be filed with the secretary of state.

The corporation is now complete and notice has been given to "all the world" of its name, the place and nature of its business, and the amount of debt it may incur. The associated persons composing it have now become in the contemplation of law a single body (in Latin, *Corpus*), an "artificial person," empowered to do, not all kinds of business, but only that or those named in its certificate of incorporation.

The stockholders of a corporation elect their board of directors, which appoints all its officials and servants. Each stockholder has as many votes as he owns shares. A single stockholder, or a group, holding fifty-one per cent of the stock can control the affairs of the corporation. A "minority stockholder" is in the position of a person who has put his money in the hand of another person or group to use at pleasure. As stockholders are entitled to the profits of the business, they are also liable for its losses, but not, as in old times, in their whole estates. Stockholders in Minnesota corporations generally are liable to lose all the money they may have paid on their shares and also an additional amount equal to the par value of those shares. This *liability* enhances the credit of corporations.

In regard to the periods for which corporations may be chartered there is some difference. Savings banks have "perpetual succession" to use an old law phrase; railroad companies may specify in their certificates their periods of existence; other corporations are limited to thirty years, but may easily be renewed.

Corporations may be terminated in three ways:

(1) by expiration of their time limit,
(2) by voluntary dissolution by a majority vote of stockholders,
(3) by forfeiture of their rights and privileges by violation of law.

As corporations are the creations of law, so their continued existence depends on a strict compliance with law. All of them are subject to "visitation." The governor may at any time require the attorney-general to examine the affairs and condition of any corporation, and make a report in writing. The legislature or either branch thereof may, by committee, make examinations of corporations.

The attorney-general is authorized to sue, in the name of the state, any corporation which he believes to have violated the law; and district courts have power to enjoin unlawful practices, if proven. The attorney-general is required to bring suit at the instance of any private citizen against a corporation, provided he gives security for costs and expenses. The public examiner maintains a strict supervision over all financial corporations and calls them to account for all departures from law.

Corporations organized outside of the state are known as *foreign* corporations. They may carry on business in Minnesota provided they maintain a public office and a resident agent in the state, and pay certain license fees into the state treasury.

Corporations organized for internal improvements, such as railroads, street railroads, canals, telegraph, and telephone lines; water, heat, light, and power supply are designated as *public service* corporations. They are specially authorized to exercise the "right of eminent domain," that is the right of taking private property for public purposes on paying the value of such property. The state has the power to regulate all such corporations, and to fix the charges for their services. The law provides a way by which any city or village may buy out any public service corporation.

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